

CITY OF GRAHAM
BOARD OF ADJUSTMENT
February 19, 2013

There was a meeting called of the Board of Adjustment on Tuesday, February 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, Ricky Hall, and Michael Benesch. Alternate board member, Andy Rumley, was also present. Melissa Guilbeau Planner, Frankie Maness City Manager, Darcy Sperry and Martha Johnson of the City staff were present. The City of Graham attorney Keith Whited was also present.

Invocation was given by Ricky Hall.

1. The Oath of Office was administered to all Board Members present by Martha Johnson, Notary Public. Also sworn in were Darcy Sperry Zoning Enforcement Officer, David Oleszek and James Bradshaw.

2. Melissa Guilbeau told the Board that a Chairman and Vice-Chairman needed to be elected.

A motion was made by Bonnie Blalock to nominate Ricky Hall as Chairman. Second by Dean Ward, motion carried unanimously.

A motion was made by Bonnie Blalock to nominate Dean Ward as Vice-Chairman. Second by Ricky Hall, motion carried unanimously.

Keith Whited, City Attorney explained the function of the Board of Adjustment stating this was a judicial process and the Board is a panel of judges. He said there could not be any conflict among the Board members with any interest in the appeal, no extra conversation outside of the process among the members and that this decision doesn't go to City Council but could go to court. Dean Ward disclosed that he requested GIS drawings from the addressing department of Alamance County and Ricky Hall provided the information to him which could be given to anyone. Dean Ward did get some aerial pictures of different years that he brought to be entered as exhibits. Keith Whited told the Board that the communication between them was ok.

3. David S. Oleszek is requesting an Appeal from a decision of the Zoning Enforcement Officer for a carport located at 530 N Melville St (GPIN 8884276215). Darcy Sperry Zoning Enforcement Officer for the City of Graham presented for the Board the staff report summary along with the AP121 timeline.

Findings of Fact

1. The property that is the subject of this appeal, 530 N Melville St, is zoned R-7. The property contains a single family detached dwelling, a freestanding metal carport and a small storage building. The property is owned by David Oleszek.
2. The structure that is the subject of this appeal is the freestanding metal carport, which is located in the side yard between the house and the property line. It is an accessory building, as defined in Section 10.16 of the *City of Graham Development Ordinance*, which defines an

accessory building as “a subordinate building, the use of which is purely incidental to that of the main building, located on the same parcel or lot with such principal use or building.”

3. Section 10.135 allows that accessory uses are permitted by right in the R-7 zoning district. Section 10.136, Note 1, specifies that “accessory uses in residential districts such as garages, utility buildings are restricted to rear yards or side yards if the required setback can be maintained.”
4. The setback requirements in the R-7 zone are 30 feet for the front yard, 8 feet for the side yard and 20% of the lot depth for the rear yard, as outlined in Section 10.245 of the *City of Graham Development Ordinance*. Note 1 of the same section, which is listed in Section 10.246, applies to the rear yard setback and allows that “accessory buildings located in the rear yard may not be located within five feet of interior rear or side lot lines.”
5. The City’s Zoning Enforcement Officer made the determination that the appellant’s metal carport was five feet from the side property line and thus did not meet the side yard setback requirement.
6. Section 10.16 of the *City of Graham Development Ordinance* defines a nonconforming structure as “a structure that does not conform to the requirements of this ordinance. The nonconformity may result from adoption of this ordinance or any subsequent amendment.”
7. The appellant, David Oleszek, in his letter of appeal dated December 6, 2012, stated that “this structure has been at its present location for over 20 years and was here when I purchased the property 2 years ago.”
8. No building permit for the freestanding metal carport located at 530 N Melville St could be found.
9. The City’s zoning regulations, as they existed prior to 1999 (when an updated Unified Development Ordinance was adopted), required the following setbacks: 30 feet for the front yard, 8 feet for the side yard and 25% of the lot depth for the rear yard. The zoning regulations prior to 1999 also contained the same “note 1” that allowed that “accessory buildings located in the rear yard may not be located within five feet of interior rear or side lot lines.”
10. The freestanding metal carport was not erected in conformance with the *City of Graham Development Ordinance* as it existed at the time. Therefore, it does not qualify as a nonconforming structure because its nonconformity was not the result of adoption of the ordinance or any subsequent amendment.
11. The City’s Zoning Enforcement Officer sent a Notice of Violation to the appellant on November 9, 2012.
12. On February 5, 2013, the zoning enforcement officer, via email correspondence, transmitted to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.
13. On February 5, 2013, a letter notifying the appellant and adjacent property owners of the hearing was deposited in the US Mail.

David Oleszek of 530 N. Melville Street spoke concerning his appeal he had submitted. He stated that he purchased the property in 2010 and the carport structure was already there. It is 5' from the property line and he understood that it doesn't meet the minimum setback requirements. Mr. Oleszek feels that the complaint was made as an argument between neighbors. He would like the carport to remain where it is. Mr. Oleszek said there is a shared driveway and the entire neighborhood has shared driveways.

Ricky Hall asked if Mr. Oleszek had a survey done when the property was purchased and he said no. Mr. Oleszek said the property had been in and out of his wife's family for years and when it became available they purchased it. Mr. Oleszek said this was his primary residence. Bill Teer asked if there was sufficient room to move the carport over to the house. Mr. Oleszek stated there is but it will not be 10' from the residence and there is also a utility pole behind it that keeps it from being pushed back. Dean Ward asked him in his appeal did he state that the carport had been there for ten to fifteen years and Mr. Oleszek said yes and that he has been coming to Graham since 1986 and the carport has been there since then. Mr. Ward asked him had he ever lived in the house and the carport not been there and he said no. Mr. Ward had a couple of photographs that came from the Alamance County GIS Department that will be entered as exhibit "B" into the record. The first photograph was from 2000 and there was no carport shown and the second photograph from 2005 shows the carport. Mr. Oleszek again stated he is asking to keep the carport where it is on the property.

Next to speak was James D. Bradshaw of 615 Cable Road Elon, N.C. He is now the executor over the estate of his mother since his brother Keith Bradshaw died who was the first executor. Mr. Bradshaw had a copy of the letter appointing him executor. This letter was entered as "Bradshaw exhibit #A" into the record. Mr. Bradshaw's mother lived at 528 N. Melville Street all of his life and the house does share the driveway with 530 N. Melville Street. He is currently overseeing the sale of the house for the heirs. Mr. Bradshaw believes it would improve the possibility for the sale of the house and help the looks of both houses if the carport was pushed back. Mr. Teer asked what he meant by pushed back. Mr. Bradshaw stated that per Darcy Sperry it should be behind the corner of the house away from the street. Mr. Bradshaw brought dated pictures he took which are to be entered as "Bradshaw exhibit #B-#G". Mr. Bradshaw would like for the carport to be moved back. He said it is a prefab structured carport that he is only able to park one car under and there is a lot of extra stuff under there and not being used for what it was originally bought for. Mr. Bradshaw would like for it to be moved back. If the carport is allowed to stay where it currently is, he would like for it to be used for its purpose.

Ricky Hall asked Mr. Bradshaw if he had considered cutting a driveway to the left side of the house. Mr. Bradshaw said that the back door is on the right side of the back of the house and his mother had a sidewalk poured to go that way with only two steps and handrail to get up into the house. The other side of the house would require six or eight steps to get up into the house. Mr. Bradshaw stated that this is an estate house and they don't have the money to do all of that. Ricky Hall asked Ms. Sperry if city employees did stake off the property and confirmed that the property was not in compliance. Ms. Sperry replied yes that is correct. Bonnie Blalock asked what Mr. Oleszek's options were. Ms. Sperry stated to remove the carport all together, or move it to the rear property and meet the 5' setback in the rear yard. Bonnie Blalock was questioning the power pole which Mr. Oleszek pointed out in the picture. Ms. Sperry said that when she said

to move it to the rear yard, it couldn't just be picked up and moved, there would be things that would have to be reconfigured to make it fit.

Dean Ward stated he was concerned about the GIS public records. The photos show it hasn't been there for ten to fifteen years, as the appellant stated. Mr. Ward said he hated to see anyone go through any hardship to move it but no one inquired with the City of Graham about the zoning before putting it there.

Mr. Oleszek asked who the gentleman on the front row was that was advising the Board. Keith Whited, who was the gentleman in question, replied he was the City of Graham's attorney.

Michael Benesch stated to the Board that they should base their decision on facts, not their opinions. Mr. Benesch then stated that the Board must go by the way the laws are written and be as fair as possible. The facts state the carport does not meet setbacks nor was there a permit on file. Hardships are there because someone would have to move the building. The carport was put there illegally and therefore the Board has to make a recommendation based on code.

Ricky Hall asked Darcy Sperry if the shed behind the carport was permitted and she said the shed was not large enough to be permitted but it still must meet the setbacks requirement and because that is considered as rear yard it does meet the setbacks.

Dean Ward asked how far the carport would have to be moved. Ms. Sperry answered 10' to 20', perhaps the length of the carport.

Bill Teer asked Mr. Bradshaw how damaging the carport was to him. Mr. Bradshaw said it was too close to the road and it makes the houses look closer together.

Ricky Hall said the case tonight we have seen evidence presented along with addition evidence that the structure was only there a few years versus 10 to 15 years. We have established there is a non-conforming structure on the property. The evidence presented to us by staff shows us the carport is out of compliance.

Findings of Fact, Conclusions of Law and Decision:

FINDINGS OF FACT

1. The property that is the subject of this appeal, 530 N Melville Street, according to Alamance County GIS aerial photographs dated 2000, did not show the structure present in the photo. However, the structure did show up in the aerial photograph dated 2005.
2. The structure that is the subject of this appeal is the freestanding metal carport, which is a nonconforming structure on the property.
3. Based on evidence by staff, the metal carport is out of compliance.

CONCLUSIONS OF LAW

1. The property is out of compliance and can be brought into compliance with minimum effort.

DECISION

For the above reasons, the Board of Adjustment affirms, in whole, the decision of the zoning enforcement officer that is the subject of this appeal.

Keith Whited explained 3 of the 5 the Board can affirm the City of Graham employee decision and it would take 4 of the 5 to overturn her decision.

Ricky Hall made a motion to deny this appeal, seconded by Dean Ward. The vote was 4 to 1 for denial.

Ricky Hall addressed Mr. Oleszek and explained that there was not enough evidence to support his request at this time and Mr. Oleszek will receive a copy of the Board's findings in writing.

Mr. Oleszek asked how long he will have to bring the property into compliance. Darcy Sperry replied she would have to check the ordinance and we will have to let him know. Ms. Sperry said the City of Graham would work with him as much as they could.

Melissa Guilbeau said the minutes from the May 10, 2007 Board of Adjustment meeting needed to be approved. A motion was made to approve the minutes by Michael Benesch, second by Dean Ward. The motion carried unanimously.

There being no further business, the meeting was adjourned.

Respectfully Submitted,
Martha Johnson, Secretary