

CITY OF GRAHAM
BOARD OF ADJUSTMENT
March 18, 2014

There was a meeting called of the Board of Adjustment on Tuesday, March 18, 2014 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, Ricky Hall and Michael Benesch, as well as Andy Rumley sitting as an alternate for Bonnie Blalock, who was not present. Staff members present were Melissa Guilbeau, City Planner, and Martha Johnson, Zoning/Inspections Technician.

Chairman Ricky Hall called the meeting to order and explained the function of the Board.

Ricky Hall asked that anyone wishing to speak come forward and be sworn in. Martha Johnson, Notary Public swore in E. Lawson Brown Jr. and Melissa Guilbeau.

Invocation was given by Ricky Hall.

1. Andy Rumley made a motion to approve the minutes from the January 21, 2014, second by Dean Ward. All voted aye.

2. Side Yard for Graham HFA (VR141). Request of Attorney for Graham HFA, LLC for a variance from the side yard setback for an existing building on property located at 611 W Whitsett St (GPIN 8874875827). Melissa Guilbeau stated the purpose of this request: “The building and its location were approved by the town and built in its current location. The side set back at eight feet is encroached by between seven tenths of a foot (0.7’) to four tenths of a foot (0.4’)”.

Mr. Brown spoke representing Graham HFA, LLC. Mr. Brown stated that this organization is in the process of selling this property to the operators Brent and Beverly Howerton of Springview Care. Mr. Brown said they had the survey done and it showed the small encroachment.

Mr. Brown said the variance if granted would preserve the spirit of the ordinance and certainly satisfy the public safety and welfare because the alternative would be for them to shave the edge of the building off which is the building on the right side where there is a sitting area in the back. This area is not occupied as a room and that is where the encroachment occurred.

Bill Teer made a motion to approve the variance, with the condition that this variance shall apply only to the existing building as it stands today, and shall not apply to any future development on the property or to the property as a whole, second by Andy Rumley. All voted in favor.

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, 611 W Whitsett St, is zoned Residential (high density) (R-7).

2. The property contains a nursing home which was erected in 1999. A building permit was issued on December 17, 1998 and a Certificate of Occupancy was issued on February 29, 2000. The building permit indicated the zoning at the time as R-7 and the side setback as 8 feet.
3. The minimum side yard width in the R-7 zoning district is 8 feet, as shown in Section 10.245 of the *City of Graham Development Ordinance*.
4. The existing building is located 7.3 to 7.6 feet from one of the side property lines, according to the applicant. This is less than the 8 feet required by the *Development Ordinance*.
5. An application for a variance was filed with the City Planner on February 25, 2014. That same day, the City Planner emailed the applicant advising them that the City would consider this situation to be a nonconforming building and asked for the applicant to elaborate on the purpose of the variance request. The applicant replied on February 26th that the request is being made because the property is being sold and the variance request is to clear title.

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.

The applicant requests this variance in order to clear title for sale of the property.

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 building was erected with a building permit from the City and passed all inspections, as evidenced by the issuance of a Certificate of Occupancy. The existing building is peculiar to 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 building permit that resulted in the existing building was issued to Paradigm HFA, LLC, with Carroll Builders, Inc. as general contractor.

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.

This variance, if granted, will not change the existing building, which was permitted and issued a Certificate of Occupancy as it stands.

There being no further business, the meeting was adjourned.

Respectfully Submitted,
Martha Johnson, Secretary