

CITY OF GRAHAM
BOARD OF ADJUSTMENT
November 18, 2014

There was a called meeting of the Board of Adjustment on Tuesday, November 18, 2014 at 7:00 pm immediately following the Planning Board Meeting in the Graham Municipal Building. Board members present were as follows: Bill Teer, Dean Ward, and Bonnie Blalock, with Tim Beshel sitting as an alternate. Michael Benesch and Ricky Hall were absent. Staff members present were Melissa Guilbeau, City Planner, and Martha Johnson, Zoning/Inspections Technician.

Vice-Chair Dean Ward called the meeting to order and explained the function of the Board.

1. Bonnie Blalock made a motion to approve the minutes from the October 21, 2014 meeting, second by Bill Teer. All voted aye.
2. Old Business
 - a. Variance for Dodson Carport (VR143). Request of Cletus and Pearl Dodson for a variance from accessory buildings in residential districts being restricted to the rear and side yards on property located at 809 Essex Dr (GPIN 8883484841).

Dean Ward asked that anyone wishing to speak come forward and be sworn in. Martha Johnson, Notary Public swore in Cletus Dodson and Melissa Guilbeau.

Ms. Guilbeau explained the applicant wants to install a carport on the front right side of their property and the slope of the property does not allow the installation on the side or behind the house as per Graham's city ordinance. The presentation includes pictures of the slope of the land and the distance between the houses on the left side.

The applicant Cletus Dodson of 809 Essex Drive spoke. Mr. Dodson stated they are at the dead end of the road. They are requesting the variance because prior to this a gas line was in their yard and the new gas line had been moved and is now parallel to their property. Mr. Dodson stated that their property beside the house on the right side drops off at least six feet. Mr. Teer asked if they had spoken to any of their neighbors and Mr. Dodson said they had only talked to one. Dean Ward asked Mr. Dodson how far off of the road were they planning on placing the accessory building. Mr. Dodson said approximately 10 feet. Mr. Ward asked if the gas line had been abandoned and Mr. Dodson said yes and the easement has been released. Mr. Dodson also mentioned there is a creek in their back yard and they couldn't put the carport back there either.

Mr. Ward asked with the elevation change beside the house if Mr. Dodson had any cost to bring in dirt to fill in that side and put the carport there and Mr. Dodson said no he didn't have any cost. Mr. Ward asked Mr. Dodson from the pictures there would be room to put the carport there and Mr. Dodson did agree. Ms. Blalock felt that it would be a hardship to bring in dirt and build a retaining wall because of the amount of money it might cost. Mr. Beshel didn't see any issue with the carport especially being at a dead end street which is up against an industrial property. Mr. Beshel also stated the carport is not directly in front of the house but more to the right.

Mr. Ward said the accessory building only being between 5 and 10 feet off of the road would not be allowed here or anywhere else in the city for any type of structure.

Ms. Guilbeau stated that the applicant was only asking for variance for the accessory building in the front yard but not a variance from the front yard setback. She told the Board if the applicant wanted a variance from the front yard setback to be sure to address that in addition to being located in the front yard. Ms. Guilbeau stated the front yard setback is 30 feet.

Dean Ward requested Ms. Guilbeau to pull up on the screen a topo map to show the property line on the side lot. Mr. Ward asked her to zoom in on the right side of the property where the elevation changes.

Mr. Teer made a motion to grant this variance, second by Tim Beshel. The vote was 3 to 1. Ms. Guilbeau stated that the variance didn't pass because a variance requires four-fifths vote to approve.

FINDINGS OF FACT

1. The property that is the subject of this variance request, 809 Essex Dr, is zoned Residential (medium density) (R-12).
2. The property contains a single family dwelling and an accessory building.
3. A carport is being proposed in the front yard.
4. The *City of Graham Development Ordinance*, in Section 10.136(1) Notes to the Table of Permitted Uses, states 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."
5. The *City of Graham Development Ordinance*, in Section 10.16 Definitions, provides the following definitions for yards:
 - A front yard is an open unoccupied space on the same lot with a main building, extending the full width of the lot and situated between the front line of the lot and the front line of the building projected to the side lines of the lot. The depth of the front yard shall be measured between the front line of the building and the front line of the lot. Covered porches, whether enclosed or unenclosed, shall be considered as part of the main building and shall not project into a required yard.
 - A rear yard is an open space on the same lot with a main building, unoccupied except as hereinafter permitted, extending the full width of the lot and situated between the rear line of the lot and the rear line of the building.
 - A side yard is an open unoccupied space on the same lot with a main building, situated between the side lines of the building and the adjacent side line of the lot, and extending from the rear lines of the front yard to the front line of the rear yard. If there be no front yard, the front boundary of the side yard shall be the front line of the lot and if there be no rear yard, the rear boundary of the side yard shall be the rear line of the lot.
6. The applicant states and has submitted pictures to illustrate that "the slope of the property does not allow for us to install it [the carport] on the side of behind the house."

7. An application for a variance from was filed with the City Planner on October 6, 2014.

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 install a carport in the front yard. Board member Ward finds that the applicant would not suffer unnecessary hardship because there are other locations on the lot where the carport could be located.

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 applicant states that the slope of the property does not allow for the carport to be installed in the side or rear yard.

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 did not cause the property to have a slope that was not conducive to sitting a carport in the side or rear yard.

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.

With the proposed condition, the variance would retain the required front yard setback and minimize the intrusion of the carport into the front yard.

DECISION

For the above reasons, the Board of Adjustment does not grant the variance that is the subject of this application.

There being no further business, the meeting was adjourned.

Respectfully Submitted,
Martha Johnson, Secretary