



Board of Adjustment

Meeting Agenda

February 19, 2013

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

Invocation

1. Oath of Office
2. Elect Chair and Vice-Chair
3. Appeal related to carport (AP121). Request of David S. Oleszek for an Appeal from a decision of the Zoning Enforcement Officer for property located at 530 N Melville St (GPIN 8884276215).

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



STAFF REPORT

Prepared by Melissa Guilbeau, City Planner

Appeal related to carport (AP121)

Type of Request: Appeal

Meeting Dates

Board of Adjustment on February 19, 2013

Contact Information

David S. Oleszek
530 N Melville St, Graham
910-261-2621

Summary

This is an appeal from a decision of the Zoning Enforcement Officer, for property located at 530 N Melville St (GPIN 8884276215).

The following is offered as evidence by staff: **AP121 Timeline**. This is a summary of events as experienced and told by Darcy Sperry, Zoning Enforcement Officer. It includes references to several attachments, which includes all the papers constituting the record upon which the action appealed from was taken.

At the end of this agenda packet is a **draft of a Resolution for the Board to consider** when making its decision. This draft Resolution should be modified as the Board sees fit and is only provided by staff as a template.

Project Name
Appeal related to carport (AP121)

Location
530 N Melville St
GPIN: 8884276215

Current Zoning
Residential, high density (R-7)



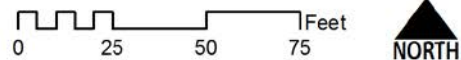
Request for Appeal

related to the location of the carport

Property located at 530 N Melville St
Tax Map# 146403
GPIN# 8884276215
Application by David Oleszek



**Board of Adjustment Meeting
February 19, 2013**



Prepared by the City of Graham Planning Dept. on 2/1/2013
This map was compiled from the GIS resources of the Burlington Regional GIS Partnership for public planning and agency support purposes. These resources include public information sources of different scales, time, origin, definition and accuracy, which may produce inconsistencies among features represented together on this map. Neither the City of Graham nor the Partnership shall be held liable for any errors in this map or supporting data. Primary public information sources from which this map was compiled, in conjunction with field surveys where required, must be considered for the verification of the information contained within this map.

AP121 Timeline

530 N Melville St Graham NC 27253

Accessory Building (Metal Carport) Appeal

11/6/12 – 8:15AM – Keith Bradshaw, the son of the owner (now deceased) of 528 N Melville St stopped by city hall to speak to Darcy Sperry, Zoning Enforcement Officer for the City of Graham. Mr. Bradshaw filed a complaint (see attachment A) regarding junk debris at 530 N Melville St. Ms. Sperry explained to Mr. Bradshaw that having a lot of “stuff” doesn’t necessarily mean a resident is in violation of any city ordinance, but she would look into the matter. Mr. Bradshaw then inquired about the setback requirements for carports – as the resident at 530 N Melville has a carport that he (Mr. Bradshaw) believed did not meet the required setbacks. Ms. Sperry explained that carports are treated as an accessory bldg. and informed him of the setback requirements in a side yard for R7 zoned property. Mr. Bradshaw indicated that he did not believe the carport was off the property line by 8’ – the requirement for R7 property (see attachment B).

11/6/12 – Ms. Sperry did a roadside inspection of the property. While the yard did have various items around the yard, no junk debris violations were noted. Ms. Sperry was not visually able to determine what the distance of the carport was from the property line, so she determined that a notice to contact letter to the 530 N Melville St owner(s) was warranted (see attachment C).

11/7/12 – Ms. Sperry sent the notice to contact letter. She gave the property owner 7 days, or until Nov 14, 2012 to contact her to arrange inspection.

11/8/12 – Ms. Sperry received a call from David Oleszek (512-8360). She agreed to meet him at the property that afternoon.

11/8/12 – Ms. Sperry went to meet with Mr. Oleszek at 530 N Melville St. Mr. Bradshaw was at the 528 N Melville St property at that time as well. Mr. Bradshaw pointed out where the front and rear property markers were located and Ms. Sperry used the rear marker for her measurement. She walked a straight line from the rear of the property towards the front of the property and then once next to the carport, measured to the edge of the carport. Ms. Sperry determined the carport distance to be 5’ from the side property line. Ms. Sperry informed Mr. Oleszek that the carport was in fact in violation of the setback requirement for a side yard. Mr. Oleszek indicated that the carport had been at the property for approximately 10-15 years. Ms. Sperry informed both parties, separately, that she would have to look into whether or not the carport had been grandfathered in at some point. Mr. Bradshaw asked Ms. Sperry to call him with her findings (see attachment D).

11/9/12 – Ms. Sperry looked at the Ordinance book dated prior to 1999 (see attachment E) and the same minimum setback requirements were in place prior to 1999 as are in place today. She also searched the City of Graham Inspections records and was not able to find where a building permit had been taken out for the carport as well.

11/9/12 – Ms. Sperry called Mr. Bradshaw and advised that no evidence was found to suggest the metal carport was grandfathered in. She sent a letter to Mr. Oleszek at 530 N Melville St notifying him of such findings and violation. She gave him 30 days to comply or correct the violation (see attachment F).

11/19/12 – Ms. Sperry received an email from David Oleszek asking if there was an appeal process he can go through. She copy and pasted the section from the Development Ordinance and emailed it to him (see attachment G).

12/6/12 – Mr. Oleszek (919-261-2621) called Ms. Sperry and asked how he would go about filing his appeal. She advised that he would have to submit a letter stating his reasons for appealing the decision made based upon the Ordinance.

12/6/12 – Mr. Oleszek hand delivered a letter of appeal to Ms. Sperry (see attachment H). Ms. Sperry advised that he would be contacted as to when the appeal will be heard by the Board of Adjustment and that all attempts to bring his carport into compliance would stop until the matter could be heard by the Board of Adjustment.

1/4/13 – Mr. Bradshaw (336-584-6428) called Ms. Sperry to find out what the status of the complaint was (see attachment I). Ms. Sperry explained to him that an appeal had been filed and the Board of Adjustment has to hear the appeal – hopefully in Feb 2013, but may be as late as March 2013.

1/16/13 – Harold Kernodle went with Ms. Sperry to take pictures. Ms. Sperry located the front and rear property markers for 528 N Melville St. She had Harold stand at the front marker and walk a straight line towards the rear of the property, while she stood at the rear marker and walked a straight line towards the front of the property. They met at the carport and measured from there. Based on the lines they walked, Ms. Sperry measured the distance just shy of 6' – still below the required 8' side setback. Ms. Sperry took pictures (see attachment J).

1/31/13 – In an attempt to get a more accurate measurement, Burke Robertson (Streets Superintendent) met Ms. Sperry at the 528 N Melville property with stakes and string. They put a stake directly in front of the marker that sits in the driveway at the front of the property. They put a stake on top of the marker at the rear of the property and ran a string between the two stakes. While Burke held the string taut at the front stake, Ms. Sperry measured from the concrete block supporting the carport, to the string. She measured it to be 5ft. Pictures were taken (see attachment K).

2/1/13 – Ms. Sperry received a call from Mr. Bradshaw. He asked if she knew when the hearing would be held. Ms. Sperry informed him that she was not 100% sure yet, but would have an answer no later than Tue February 5, 2013. She told him all parties would be notified of the time and date. Ms. Sperry asked Mr. Bradshaw if Alamance County records have his mailing address on file and he said no. His address is 615 Cable Rd, Elon NC 27244. Mr. Bradshaw also inquired as to whether or not his neighbor at 530 N Melville St can have an open container(s) or bucket(s) sitting underneath the carport in question. Ms. Sperry explained that as long as a bucket does not have standing water in it, it is not a violation of the City of Graham nuisance ordinance. Mr. Bradshaw indicated that he would continue to take pictures and have them ready for the appeal hearing. Ms. Sperry reminded Mr. Bradshaw that the

appeal hearing is regarding the setback requirement for the carport and has nothing to do with junk debris on the property. She asked Mr. Bradshaw if he wanted to file a complaint against the 530 N Melville St property with regards to junk debris, and he indicated that he was going to wait until after the hearing.

* Complaint *

REQUEST FOR INSPECTION GRAHAM, N.C.

APPROVED

REJECTED

PERMIT NO. _____ DATE: 11/16/12

INSPECTOR: _____ TIME: 8:15 AM

COMPLETE TIME: _____ DATE: _____

OWNER: OLESZEK DAVID S

ADDRESS: 530 N. Melville ST

CONTRACTOR: _____

REQUESTED BY: () OWNER () CONTR. () AGENT

BUILDING

- () FOOTINGS
- () FOUNDATION
- () FRAMING
- () FINAL
- () OTHER () INSUL

ELECTRICAL

- () SAW SERVICE
- () ROUGH
- () FINAL
- () OTHER

REQUIRED INSPECTIONS

HEATING

- () ROUGH
- () VENTING
- () GAS PIPE
- () FINAL
- () OTHER

PLUMBING

- () WATER () SEWER
- () ROUGH
- () FINAL
- () OTHER

7 DAY notice
to contact
sent 11/7/12 ✓
(30) DAY violation
letter sent
11/9/12

REMARKS

gentleman who owns property
@ 530 N. Melville stepped into office
to discuss junk debris and permit
possibly not meeting setback requirements.
open roadside inspection - debris does
not appear to be in violation - not sure →

about carpet: Will send contact
letter.

ARTICLE II. DEFINITIONS

Section 10.16 Definitions.

For the purpose of this chapter certain terms and words are defined as follows:

Words used in the present tense include the future tense. Words used in the singular number include the plural, and words used in the plural number include the singular. The word "person" includes a firm, association, organization, partnership, corporation, trust, and company as well as an individual. The word "lot" includes the word "plot" or "parcel." The word "building" includes the word "structure." The word "shall" is always mandatory and not directory. The word "may" is permissive. The words "used" or "occupied" as applied to any land or building shall be construed to include the words "intended," "arranged," or "designated to be used" or "occupied." The words "residential property" shall apply to land zoned for residential use and to other land occupied by residential structures. The words "A map, A zoning map," or "Graham zoning map" shall mean the zoning map of the City of Graham, North Carolina. The words "article," "zoning ordinance," or "Graham zoning ordinance" shall mean the zoning ordinance of the City of Graham, North Carolina. The words "Graham planning area" or "planning area" shall mean the area within which the City of Graham exercises zoning authority. All other words not defined below shall have their customary dictionary definitions.

Accessory building.- 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.

Adult Establishment – See Sexually Oriented Business

Alley - A public or private thoroughfare which affords only a secondary means of access to abutting property.

Bar - An establishment primarily engaged in the retail sale of beer or wine for consumption on the premises. Such establishment must obtain a ABC license for on-premise beer or wine consumption only. The establishment may also be engaged in the retail sale of prepared food for on-premise consumption.

Bed and Breakfast - A private home offering bed and breakfast accommodations to eight or less persons per night for a period of less than a week.

Buffer - (Along a stream or other body of water) An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not form a channel and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.

Building - Any structure enclosed and isolated by exterior walls or columns constructed or used for residence, business, industry, or other public or private purposes, or accessory thereto, and including tents, manufactured homes, freestanding billboards and signs, fences, and similar structures whether stationary or movable. The term "building" shall be construed as if followed by the words "or parts thereof."



Section 10.135

Table of Permitted Uses

Use Type	R-18	R-15	R-12	R-9	R-7	C-R	R-MF	R-G	O-I	C-O-I	B-3	B-2	B-1	C-B	I-1	C-I	I-2	C-MXR	C-MXC	LUC
															Note 19		Note 19			
ABC Store (liquor)												X	X	C					C	3
Accessory Uses, See Note 1	X	X	X	X	X	C	X	X	X	C	X	X	X	C	X	C	X	C	C	3
Accounting, Auditing or Bookkeeping Services									X	C		X	X	C				C	C	3
Adult Establishment												S			S					5
Advertising Agency									X	C		X	X	C				C	C	3
Airport															S	C	S			5
Alteration, Clothing Repair											X	X	X	C				C	C	3
Ambulance, Fire, Rescue Station	S	S	S	S	S	C	X	X	X	C	X	X	X	C	X	C	X	C	C	3
Amusement/Water Parks												S			S	C	S			4
Animal Hospital, with outdoor kennels or runs, provided all runs and pens are at least 50 ft. from any property line												S		C	X	C	X		C	3
Antique Shops									S	C	X	X	X	C				C	C	3
Antique shops, florist shops, other specialty shops in structures originally designed for residential use									S	C	X	X	X	C				C	C	3
Apparel Sales (Clothing, Shoes, Accessories)											X	X	X	C				C	C	3
Appliance Store												X	X	C	X	C			C	3
Architect, Engineer or Surveyor's Office									X	C		X	X	C	X	C			C	3
Arts and Crafts Store											X	X	X	C				C	C	3
Asphalt Mixing Plant																	S			5
Athletic Fields, See Note 2	S	S	S	S	S	C	S	S	X	C	X	X		C	X	C	X	C	C	1
Auditoriums, Stadiums, and similar facilities where admission is charged or organized athletic events are held, See Note 2							S	S	S			S	S	C	S	C			C	4
Automobile Accessory and Supply Sales												X	X	C	X	C		C	C	3
Automobile assembling, painting, upholstering, rebuilding, reconditioning; body and fender works															X	C	X			4



Section 10.136

Notes to the Table of Permitted Uses.

1. **Accessory Uses in Residential Districts** - 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. For a noncommercial greenhouse that is an accessory use, the heating plant for the greenhouse must be located within 60 feet of the front property line or within 10 feet of any other property line. In addition, in the R-18 district, one private stable on a lot at least 20,000 square feet in area is permitted, provided the stable is located at least 60 feet from the front property line and not less than 10 feet from any other property line.

On lots occupied by multifamily dwellings, the following accessory buildings shall be permitted, provided their exteriors harmonize with the multifamily structures.

- a. Garages, located as required in section Table of Area, Height, and Yard Regulations.
 - b. Coin laundries, offices, and recreational buildings to serve residents of the multifamily development, provided they do not intrude into any minimum. required yard.
 - c. Equipment storage buildings located as required in section Table of Area, Height, and Yard Regulations.
2. **Athletic Fields, Auditoriums, Stadiums** - All athletic fields shall have access to a collector or higher capacity street.
 3. **Automotive Towing Service** - The auto towing area must be screened with a six-foot high opaque fence in addition to the required planting yard. No outdoor storage or salvaging is permitted.
 4. **Bars, Night Clubs, Dance Halls (as a principle use)** - No bar, night club or dance hall shall be located within 500 feet of a church, elementary or secondary school, public park, residentially zoned property, or sexually oriented business. Where the property on which a bar is located abuts residential property, screening including a minimum six-foot high opaque fence along the entire length of the property of the abutting residence(s). The main entrance of the building shall be toward a street zoned predominantly for nonresidential uses. Parking areas related to the establishment shall be located no closer than 30 feet to the property line of abutting residences. *(Amended by City Council on 10/7/03)*
 5. **Batting Cages (outdoor); Golf Driving Ranges** - Fencing, netting, or other control measures shall be provided around the perimeter of the batting or driving area to prevent balls from leaving the area.
 6. **Building Supply Sales, Equipment Rental and Leasing (with storage yard)** - Outside storage shall be completely screened from view with opaque fencing.
 7. **Car Wash** - Building(s) shall be at least 75 feet from any property line which adjoins residential or office-institutional zoned property. A minimum six-foot high opaque fence shall be provided adjacent to all residentially zoned property. Hours of operation shall be between 8:00 a.m. and 8:00 p.m. when adjoining developed residentially zoned property. Adequate provision shall be made for safe and efficient disposal of waste and runoff.



Section 10.245 Area, Height, and Yard Regulations

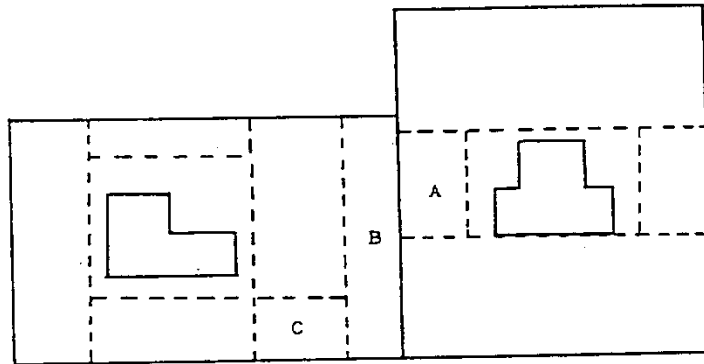
Zoning District	Minimum Lot Area (Square Feet)			Minimum Lot Width (Feet)	Maximum Building Height	Yard Depth Front	Minimum Yard Size (Feet From Property Line)		
	Single Family Dwelling	Two-Family Dwelling	Multi-Family Dwelling				Side Yard Width	Side Yard Width Abutting Street	Rear Yard Depth
R-18 (See Section 10.249)	18,000			100	35 feet	40 (See Note 9)	15	20 (See Note 2)	20% of the lot depth (1)(2)
R-15 (See Section 10.249)	15,000			90	35 feet	40 (See Note 9)	10	20 (See Note 2)	20% of the lot depth (1)(2)
R-12 (See Section 10.249)	12,000			80	35 feet	30 (See Note 9)	10	20 (See Note 2)	20% of the lot depth (1)(2)
R-9	9,000			60 for single family dwelling	35 feet	30 (See Note 9)	8	15 (See Note 2)	20% of the lot depth (1)(2)
R-7	7,000			60 for single family dwelling	35 feet	30 (See Note 9)	8	15 (See Note 2)	20% of the lot depth (See Notes 1 and 2)
R-MF	7,000	11,000	15,000 for 3 dwelling units; 17,000 for 4 dwelling units; add 1,500 for each dwelling unit in excess of 4	60 for single-family dwelling; 80 for two-family dwelling; 95 for multi-family dwelling	35 feet for single-family and two family dwellings	30 for single family and two family dwellings; 25 for multi-family dwellings (See Note 9)	8 for single-family and two family dwellings. For multifamily, 25 feet minimum, see Sec. 10.247	15 for single-family and two family dwellings. For multifamily, 25 feet minimum, see Sec. 10.247	20% of the lot depth for single-family and two-family dwelling; (See Notes 1 and 2) For multi-family, 25 feet minimum, see Sec. 10.247.



Section 10.246

Notes to the Table of Area, Yard and Height Requirements

1. Accessory buildings located in the rear yard may not be located within five feet of interior rear or side lot lines. If the rear line of a lot and the side line of an adjoining lot zoned residential are the same in whole or in part, any accessory building on the first lot shall lie at least as far from the common lot line as the distance specified by this article as the minimum required side yard width for the adjoining lot.



- A. Minimum side yard specified by this article.
 - B. Area in which no accessory building shall be located (same width as A).
 - C. Another area in which no accessory building shall be located (see (2) below).
2. Where the side yard of a lot abuts a street and the adjoining lot fronts on that street, no accessory building shall be located in that portion of the rear yard lying closer to that street than the distance specified by this article as the minimum side yard width.
 3. Requirements for manufactured homes on individual lots are the same as for single-family dwellings.
 4. For permitted residential dwellings, the requirements of the R-9 residential district shall apply.
 5. For buildings over fifty 50 feet in height, one foot of additional front yard depth is required for each two feet of height over 50 feet.
 6. The first five feet may be developed only for sidewalk, grass and plants; it may not be used for off-street parking.
 7. (reserved)
 8. In no case shall a rear yard depth greater than 75 feet be required.
 9. On any street except South Main Street (North Carolina Highway 87), Harden Street (North Carolina Highway 54), Elm Street, Hanover Road, East Gilbreath Street, Pine Street. South Maple Street to



COPY

City of Graham
P.O Drawer 357
201 South Main Street
Graham, North Carolina 27253
Tel: (336) 570-6700 / Fax: (336) 570-6703

NOVEMBER 7, 2012

OLESZEK DAVID S
530 N MELVILLE ST
GRAHAM NC 27253

NOTICE TO CONTACT

This notice to contact is concerning possible development ordinance violations at 530 N Melville St in Graham NC. Alamance County tax GPIN #8884276215 records show you as the owner(s) of this property.

The following ordinance violations may be present;

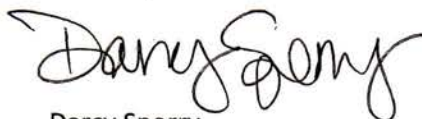
Section 10.136 Notes to the Table of Permitted Uses.

- **1. Accessory Uses in Residential Districts - 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.**

The City of Graham has received a complaint regarding the metal carport located in the side yard of the property at 530 N Melville St in Graham NC. Our City of Graham Development Ordinance allows for accessory structures in the side yard as long as the minimum setback requirements can be met. Your property is zoned R7, which requires the accessory structure to be a minimum 8 feet from the side property line. As property owner(s) you are responsible for any potential violations at the property. You will be given seven (7) days or until November 14, 2012 to arrange a date and time when we can meet at the property. After this date, elevated enforcement actions may be taken.

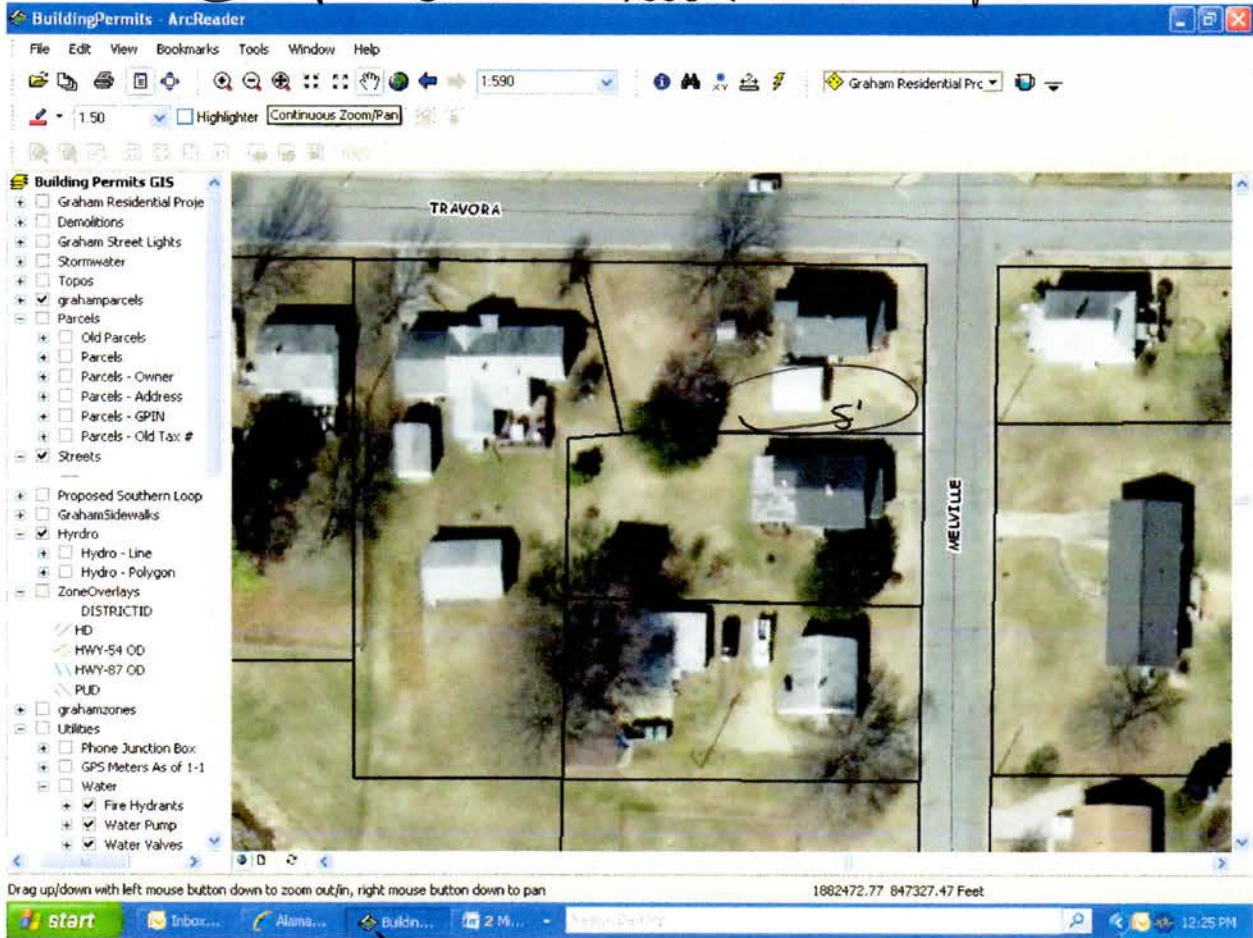
Please contact me to arrange a meeting at (336) 570-6705 or I can be reached by email at dsperry@cityofgraham.com. Thank you for your cooperation in this matter.

Sincerely,



Darcy Sperry
Zoning Enforcement Officer
City of Graham

11/8/12 Met w/ property owner - Appears as if
carport does not meet setback requirements - only
5'
8' to 8'



(Complainant)

Douglas Bradshaw - 584-6428

11/9/12 - 10:20 AM - called Mr. Bradshaw and advised that
no evidence found to suggest metal carport was
grandfathered in. - will send letter to property
owners notifying them of such findings and
notifying they are in violation.

prior to 7/1/1999

Chapter 10

PLANNING AND DEVELOPMENT*

- Art. I. In General, §§ 10-1-10-15
- Art. II. Planning and Zoning Commission, §§ 10-16-10-40
- Art. ~~III.~~ Appearance Commission, §§ 10-41-10-60
- Art. ~~IV.~~ Trees, §§ 10-61-10-95
 - Div. 1. Generally, §§ 10-61-10-75
 - Div. 2. Tree Board, §§ 10-76-10-95
- Art. V. Mobile Homes, §§ 10-96-10-120
- Art. ~~VI.~~ Flood Damage Prevention, §§ 10-121-10-140
- Art. VII. Zoning, §§ 10-141-10-310
 - Div. 1. Generally, §§ 10-141-10-175
 - Div. 2. Amendments Generally, §§ 10-176-10-190
 - Div. 3. Board of Adjustment Generally, §§ 10-191-10-210
 - Div. 4. Districts Generally, §§ 10-211-10-235
 - Div. 5. Historic District, §§ 10-236-10-285
 - Div. 6. Miscellaneous Use Regulations, §§ 10-286-10-310
- Art. VIII. Subdivision Regulations, §§ 10-311-10-325

ARTICLE I. IN GENERAL

Sec. 10-1. Remedy.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used, in violation of this chapter, or of any ordinance or other regulation made under authority conferred thereby, the proper authorities of the city, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.

(Code 1978, Ch. J, Art. I, § 12)

Secs. 10-2-10-15. Reserved.

*Cross references—Administration, Ch. 2; buildings and building regulations, Ch. 4; parks and recreation, Ch. 9; streets and sidewalks, Ch. 12; utilities, Ch. 13.

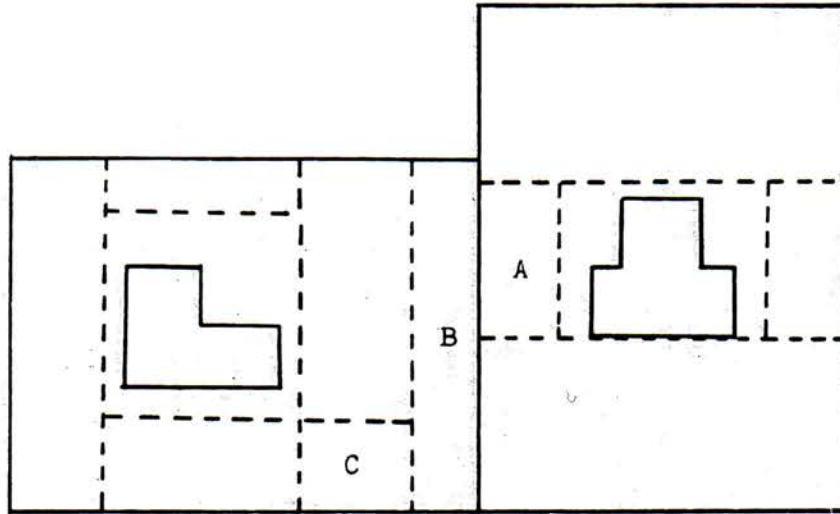
State law references—Planning and regulation of development, G.S. § 160A-360 et seq.; interlocal cooperation, G.S. § 160A-460 et seq.

AREA, HEIGHT, AND YARD REGULATIONS

Zoning District	Minimum Lot Area (Square Feet)			Minimum Lot Width (Feet)	Maximum Building Height	Front Yard Depth	Side Yard Width	Side Yard Width Abutting a Street	Rear Yard Depth
	Single-Family Dwelling	Two-Family Dwelling	Multi-Family Dwelling						
R-18	18,000			100	35 feet	40 (12)	15	20 (2)	25% of the lot depth (1)(2)
R-15	15,000			90	35 feet	40 (12)	10	20 (2)	25% of the lot depth (1)(2)
R-12	12,000			80	35 feet	30 (12)	10	20 (2)	25% of the lot depth (1)(2)
R-7	7,000	11,000		60 for single-family dwelling; 80 for two-family dwelling	35 feet	30 (12)	8	15 (2)	25% of the lot depth (1)(2)
R-MF (10)	7,000	11,000	15,000 for 3 dwelling units; 17,000 for 4 dwelling units; add 1,500 for each dwelling unit in excess of 4	60 for single-family dwelling; 80 for two-family dwelling; 95 for multi-family dwelling	35 feet for single-family and two-family dwellings	30 for single-family and two-family dwellings; 25-50 for multifamily dwellings, see (4) below (12)	8 for single-family and two-family dwellings; 20 for multifamily dwellings and 25 where a front or rear entrance faces a side lot line or where the lot exceeds 4,000 square feet in area	15 for single-family and two-family dwellings; for multifamily dwellings, ½ the front yard depth requirement, or ½ the front yard depth requirement for a single-family dwelling on the adjacent lot, or 15 feet, whichever is greatest (5)	25% of the lot depth for single-family and two-family dwelling (1)(2); 30 or twice the building height whichever is greater, for multifamily dwellings (11)
R-G (3) (10)	7,000	11,000	15,000 for 3 dwelling units; 17,000 for 4 dwelling units; add 1,500 for each dwelling unit in excess of 4	60 for single-family dwelling; 80 for two-family dwelling; 95 for multi-family dwelling	35 feet for single-family and two-family dwellings	30 for single-family and two-family dwellings; 25-50 for multifamily dwellings, see (4) below (12)	8 for single-family and two-family dwellings; 20 for multifamily dwellings and 25 where a front or rear entrance faces a side lot line or where the lot exceeds 4,000 square feet in area	15 for single-family and two-family dwellings; for multifamily dwellings, ½ the front yard depth requirement, or ½ the front yard depth requirement for a single-family dwelling on the adjacent lot, or 15 feet, whichever is greatest (5)	25% of the lot depth for single-family and two-family dwelling (1)(2); 30 or twice the building height whichever is greater, for multifamily dwellings (11)

NOTES

(1) Accessory buildings located in the rear yard may not be located within five (5) feet of interior rear or side lot lines. If the rear line of a lot and the side line of an adjoining lot zoned residential are the same in whole or in part, any accessory building on the first lot shall lie at least as far from the common lot line as the distance specified by this article as the minimum required side yard width for the adjoining lot.



- A. Minimum side yard specified by this article.
- B. Area in which no accessory building shall be located (same width as a.).
- C. Another area in which no accessory building shall be located (see (2) below).

(2) Where the side yard of a lot abuts a street and the adjoining lot fronts on that street, no accessory building shall be located in that portion of the rear yard lying closer to that street than the distance specified by this article as the minimum side yard width.

(3) Requirements for mobile homes on individual lots are the same as for single-family dwellings. Requirements for mobile home parks are contained in Chapter 10, Article V of the Code of Ordinances of the City of Graham.

(4)

Minimum Required Depth of Front Yard
 (Provided that in no case shall a depth greater than 50 feet be required)

<i>Location of Multifamily Dwelling(s)</i>	
Along North Carolina Highway 54 south of its intersection with East Pine Street, and along North Carolina Highway 87 south of its intersection with Interstate 85	40 feet or 1½ times the building height, whichever is greater
Within 500 feet of an R-18 Residential District	40 feet or 1½ times the building height, whichever is greater

COPY

City of Graham
P.O Drawer 357
201 South Main Street
Graham, North Carolina 27253
Tel: (336) 570-6700 / Fax: (336) 570-6703

NOVEMBER 9, 2012

OLESZEK DAVID S
530 N MELVILLE ST
GRAHAM NC 27253

NOTICE OF VIOLATION

This notice of violation is concerning development ordinance violation(s) at 530 N Melville St in Graham NC. Alamance County tax GPIN #8884276215 records show you as the owner(s) of this property.

The following ordinance violations are present;

Section 10.136 Notes to the Table of Permitted Uses.

- **1. Accessory Uses in Residential Districts - 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.**

As you were made aware in a letter dated November 7, 2012 (see attached), the City of Graham has received a complaint regarding the accessory structure (metal carport) located in the side yard of the property at 530 N Melville St in Graham NC. Our City of Graham Development Ordinance allows for accessory structures in the side yard as long as the minimum setback requirements can be met. Your property is zoned R7, which requires the accessory structure to be a minimum 8 feet from the side property line.

Per our meeting at the property on November 8, 2012, I was able to determine that the metal carport is 5 feet from the property line and is therefore in violation of the above Development Ordinance. As property owner(s) you are responsible for any violations at the property. You will be given thirty (30) days or until December 9, 2012 to either move the accessory structure (metal carport) to meet the minimum set back requirements for the side yard or remove the accessory structure (metal carport) from the property. The acceptable measurements for an accessory structure in the side yard on a property zoned R7 is 8 feet from the side property line and 10 feet from the house. As we discussed yesterday, the accessory structure (metal carport) can be moved to the rear yard and would then have to be a minimum of 5 feet from the side property line and 10 feet from the house. After this date, elevated enforcement actions may be taken.

Please contact me to arrange a meeting at (336) 570-6705 or I can be reached by email at dsperry@cityofgraham.com. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Darcy Sperry". The signature is fluid and cursive, with the first name "Darcy" being more prominent than the last name "Sperry".

Darcy Sperry
Zoning Enforcement Officer
City of Graham

Darcy Sperry

From: Darcy Sperry [dsperry@cityofgraham.com]
Sent: Monday, November 19, 2012 3:19 PM
To: 'David.oleszek'
Subject: RE: Car port

Mr Oleszek –

If you choose to, you can appeal my decision to the Board of Adjustment. I have copied and pasted the section of the City of Graham Development Ordinances that deals with appeals. You can also read more at cityofgraham.com – click on Departments, then Inspections. Please let me know if you should have any further questions – thank you and have a nice day!

Darcy Sperry
Zoning Enforcement Officer

City of Graham
PO Drawer 357
201 South Main Street
Graham NC 27253
Tel: (336) 570-6705
Fax: (336)570-6703
Email: dsperry@cityofgraham.com

DIVISION 4. BOARD OF ADJUSTMENT

Section 10.95 Creation; members; appointment; compensation.

There shall be and is hereby created a board of adjustment, referred to in this division as the "board," consisting of seven members. Five members shall be citizens and residents of the City of Graham and shall be appointed by the City Council; two members shall be citizens and residents of the area lying outside the corporate limits of the City of Graham (extraterritorial area) but within the Graham planning area and shall be appointed by the Alamance County Board of Commissioners in accordance with section 160A-362 of the General Statutes of North Carolina. Extraterritorial members shall have equal rights, privileges, and duties with the other members. The Council may, in its discretion, appoint alternate members to serve on the board in the absence or temporary disqualification of any City member or to fill a vacancy pending appointment of a City member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as City members. Each alternate member, while attending any City or special meeting of the board and serving on behalf of any City member, shall have and may exercise all powers and duties of a City member. The members of the board of adjustment shall receive no compensation for their services.

(Section 10.95 amended by City Council 7/11/2006)

Section 10.96 Officers; proceedings generally.

The board shall elect a chair and a vice-chair, each of whom shall serve for one year or until s/he is re-elected or his/her successor is elected. The board shall appoint a secretary who may be an officer or an employee of the city. It shall adopt rules for the conduct of its business. Meetings shall be held at the call of the chair and at such other times as the board may determine. A quorum for a meeting shall consist of 6, members of the board. The chair or, in his/her absence, the vice-chair, may administer oaths and compel the attendance of witnesses by subpoena. All meetings of the board shall be open to the public. The secretary shall keep minutes of the proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact. The board shall keep records of its examinations and other official actions, all of which shall be filed immediately in the office of the board and shall be a public record.

Section 10.97 Appeals; hearings; notice.

Appeals to the board of adjustment may be taken by any person aggrieved or by an officer, department, board, or bureau of the City of Graham affected by any decision of the zoning enforcement officer. Such appeals shall be taken within times prescribed by the board of adjustment by general rule, by filing with the zoning enforcement officer and with the board of adjustment a notice of appeal specifying the ground thereof. The zoning enforcement officer shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. The board of adjustment shall fix a reasonable time for the hearing of the appeal or other matter referred to it, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. **32**
printed on Development Ordinances October 24, 2012

At the hearing any party in interest may appear in person or by agent or attorney.

Section 10.98 Stay of proceedings.

An appeal stays all proceedings in furtherance of the action appealed from, unless the zoning enforcement officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that, by reason of facts stated in the certificate, a stay would, in his/her opinion, cause imminent peril to life and property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of this article. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application, on notice to the zoning enforcement officer/planner and on due cause shown.

Section 10.99 Powers and duties generally.

The board of adjustment shall have the following powers and duties:

- (1) *Administrative review.*.. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this article.
- (2) *Variances.* When practical difficulties or unnecessary hardships would result from carrying out the strict letter of the ordinance, the board of adjustment shall have the power to vary or modify any of the regulations or provisions of the ordinance so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. No change in permitted uses may be authorized by variance. Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed on any approval issued by the board. These regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained, provided no change in permitted uses may be authorized by variance. No variance shall be granted unless the board of adjustment finds that all of the following conditions exist:
 - (a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography.
 - (b) The application of this article to this particular piece of property would create an unnecessary hardship.
 - (c) Such conditions are peculiar to the particular piece of property involved.
 - (d) Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of this article.
 - (e) The variance is not a request to permit a use of land, building, or structure that is prohibited by this article in the district in which the property is located.
 - (f) The condition for which the variance is sought did not arise from an action of the property owner.

33 printed on Development Ordinances October 24, 2012

The board of adjustment may impose reasonable conditions upon any variance it grants. Such conditions shall further the objectives of the particular regulation from which the variance is granted.

(3) The Board of Adjustment shall not have jurisdiction with respect to Section 10.85 Conditional Zoning Districts except as provided in this section. The Board of Adjustment shall have jurisdiction with respect to conditional districts if the request pertains to a variance from specified minimum requirements of the zoning ordinance and is filed with the Board prior to the approval of a conditional district. In addition the Board of Adjustment may also hear and decide on various petitions for approved conditional district plans on matters related to ordinance provisions which are not associated with specifically approved conditions of the plan that are more restrictive than minimum ordinance requirements. At no time shall the Board of Adjustment have authority to consider a variance related to the number of or size of permissible signs in a conditional district.

(Section 10.99, (3) added by City Council 10/5/2004)

(Section 10.99, (2) amended by City Council 7/11/2006)

Section 10.100 Decisions of board.

(a) In exercising the above mentioned powers, the board of adjustment may, in conformity with the provisions of this article, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision or determination that in its opinion ought to be made in the premises. To this end the board shall have all the powers of the zoning enforcement officer from whom the appeal is taken.

(b) The concurring vote of four-fifths of the members of the board of adjustment shall be necessary to reverse any order, requirement, decision, or determination of an administrative official charged with the enforcement of this article, or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance, or to grant a variance from the provisions of the ordinance. Vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite 4/5 (four/fifths) of the members if there are no qualified alternates available to take the place of such members.

(c) The final decision of each matter decided by the Board shall be by recorded resolution indicating the reasons for the decision, based on findings fact and conclusions of law, which shall be public record.

(Section 10.100 amended by City Council 7/11/2006)

Section 10.101 Appeals from board.

Any person or persons jointly or individually aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board or bureau of the City of Graham shall have recourse to the courts as provided by law.

Section 10.102 Terms; vacancies; removal.

(a) The term of office of the members of the board of adjustment shall be for overlapping terms of three years. Vacancies occurring for any reason other than expiration of term shall be filled as soon as is reasonably possible after such vacancy occurs by the proper board making the appointment. **34** *printed on Development Ordinances October 24, 2012*

Such appointment shall be for the period of the unexpired terms, or for a longer term up to three years if needed to prevent the termination of four or more terms in the same year.

(b) A member may be removed for cause by the City Council for reasons such as repeated absence. If a member is absent or expects to be absent for reasons of health or time out-of-town, that member may request that the absence(s) be excused. Before a member is removed for cause, s/he shall receive a letter from the Council describing the proposed action and giving the member an opportunity to state why the action should or should not be taken.

Sections 10.102-10.109 Reserved

From: David.oleszek [mailto:david.oleszek@yahoo.com]

Sent: Monday, November 19, 2012 9:03 AM

To: dsperry@cityofgraham.com

Subject: Car port

Is there any appeal process i can go through to avoid having to move my carport at 530 n. Melville st. Also ,please email me your phone #. Im in SC working and dont have it.

David Oleszek
910-261-2621

RECEIVED

DEC 06 2012

**CITY OF GRAHAM
INSP. / P.Z.**

06 DEC 12
David S. Oleszek
530 N. Melville ST.
Graham, NC 27253
910-261-2621

Dear Sirs,

I am writing to give notification that I am appealing the decision made by the Zoning Enforcement Officer at the property located at 530 N. Melville st.

The complaint was made out of spite because the complainant was angry at me for not maintaining my property to his standards. The enforcement officer informed me that my property met the city standards. The person making the complaint then moved on to the carport. This person informed the officer during the property inspection that he did not want it moved only cleaned up. The officer informed him it met the standards.

This structure has been at its present location for over 20 years and was here when I purchased the property 2 years ago. It has not posed any hazard.

Thank you for your consideration,

David S. Oleszek.

2008

JULY

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

AUGUST

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

SEPTEMBER

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

OCTOBER

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

NOVEMBER

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

DECEMBER

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

2009

JANUARY

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

FEBRUARY

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28

MARCH

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

APRIL

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

MAY

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						



JAMES Bradshaw
 336-584-6428
 - Compliment

11/4/13 - called me to find out what the status of this is - I explained to him that an appeal has been filed and the B.O.A. has to hear that appeal - hopefully in Feb, but may be in March.

Lee Whitaker

Business Growth Strategist

825 S. Main Street • Burlington, NC 27215
 Phone 336-222-0717 x204 • Fax 336-222-0773

Cellular Phone 336-516-1018

lee@pipburlington.com • www.pipburlington.com

Attachment J
Pictures taken on January 16, 2013 for case AP121



Picture J-1. Harold Kernodle, City of Graham Building Inspector, uses a tape measure to measure the distance from the metal carport to what he has identified as the side property line.



Picture J-2. Harold Kernodle, City of Graham Building Inspector, uses a tape measure to measure the distance from the metal carport to what he has identified as the side property line.



Picture J-3. Harold Kernodle, City of Graham Building Inspector, uses a tape measure to measure the distance from the metal carport to what he has identified as the side property line.



Picture J-4. Harold Kernodle, City of Graham Building Inspector, uses a tape measure to measure the distance from the metal carport to what he has identified as the side property line.



Picture J-5. Harold Kernodle, City of Graham Building Inspector, uses a tape measure to measure the distance from the metal carport to what he has identified as the side property line.



Picture J-6. The metal carport and side of the single family house at 530 N Melville St.



Picture J-7. The metal carport and small storage building.

Attachment K
Pictures taken on January 16, 2013 for case AP121



Picture K-1. Darcy Sperry, Zoning Enforcement Officer, and Burke Robertson, Streets Superintendent, use a tape measure to measure the distance from the metal carport to the side property line, which has been identified by pulling a string taut between the iron posts that mark the property corners.



Picture K-2. Darcy Sperry, Zoning Enforcement Officer, and Burke Robertson, Streets Superintendent, use a tape measure to measure the distance from the metal carport to the side property line, which has been identified by pulling a string taut between the iron posts that mark the property corners.



Picture K-3. Darcy Sperry, Zoning Enforcement Officer, and Burke Robertson, Streets Superintendent, use a tape measure to measure the distance from the metal carport to the side property line, which has been identified by pulling a string taut between the iron posts that mark the property corners.



Picture K-4. Darcy Sperry, Zoning Enforcement Officer, and Burke Robertson, Streets Superintendent, use a tape measure to measure the distance from the metal carport to the side property line, which has been identified by pulling a string taut between the iron posts that mark the property corners.



Picture K-5. The taut string that was used to identify the side property line.



Picture K-6. The taut string that was used to identify the side property line.



Board of Adjustment Resolution of Findings of Fact, Conclusions of Law and Decision

The Board of Adjustment for the City of Graham, North Carolina, having held a public hearing on **February 19, 2013** to consider case number **AP121**, submitted by **David S. Oleszek** of 530 N Melville St, for an appeal of a decision made by the Zoning Enforcement Officer, and having heard all the evidence and arguments presented at the hearings, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS OF LAW:

FINDINGS OF FACT

NOTE: These Findings of Fact were prepared by staff and should be modified by the Board as it sees fit.

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.
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, 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. The appellant submitted a letter of appeal on December 6, 2012.
13. 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.
14. On February 5, 2013, a letter notifying the appellant and adjacent property owners of the hearing was deposited in the US Mail.

[insert additional Findings of Fact, if any are made]

CONCLUSIONS OF LAW

NOTE: These Conclusions of Law were prepared by staff and should be modified by the Board as it sees fit.

1. The structure was not erected in conformance with the requirements of the *City of Graham Development Ordinance* as they existed at the time.
2. The structure does not meet the requirements of the *City of Graham Development Ordinance*.

[insert additional Conclusions of Law, if any are made]

DECISION

In exercising its powers, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and shall make any order, requirement, decision or determination that in its opinion ought to be made in the premises. To this end the board shall have all the powers of the zoning enforcement officer from whom the appeal is taken.

For the above reasons, the Board of Adjustment [reverses/affirms/modifies], in [whole/part], the order, requirement, decision or determination of the zoning enforcement officer that is the subject of this appeal.

[insert additional description of the Decision, if necessary]

The resolution reflects the decision of the Board of Adjustment, made the 19th day of February, 2013.

Attest:

[name], Chair

Martha Johnson, Secretary