



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 **October 21, 2014 and November 18, 2014** to consider case number **VR143**, submitted by **Cletus and Pearl Dodson** of 809 Essex Dr, Graham, NC 27253, for a **variance from accessory buildings in residential districts being restricted to the rear and side yards for property located at 809 Essex Dr**, 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

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

The Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

- 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 siting 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

In exercising its powers, the Board of Adjustment may grant or deny a variance and may impose any appropriate conditions on the variance, provided that the conditions are reasonably related to the variance. The concurring vote of four-fifths of the Board shall be necessary to grant a variance.

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

The resolution reflects the decision of the Board of Adjustment, made the 18th day of November, 2014.

Attest:

Ricky C Hall
Ricky Hall, Chair

Martha Johnson
Martha Johnson, Secretary