



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 **March 18, 2014** to consider **case number VR141**, submitted by **E. Lawson Brown, Attorney for Graham HFA, LLC** of PO Box 2958, Burlington, NC 27216, for a **variance from the side yard setback for an existing building at 611 W Whitsett St**, 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, 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

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.

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.

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 grants the variance that is the subject of this application, with the following condition:

- 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.

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

Attest:



Ricky Hall, Chair



Martha Johnson, Secretary