



Board of Adjustment

Meeting Agenda

August 15, 2023 6:30

Council Chambers, 201 S Main St

1. Approve minutes of the July 18, 2023 meeting
2. New Business
 - A. Appoint Vice-Chair
3. Public comment on non-agenda items

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

CITY OF GRAHAM
BOARD OF ADJUSTMENT
July 18, 2023

Michael Bensch made a motion to call the meeting to order. at 6:30 p.m. Tony Bailey seconded this motion. All voted aye. Board Members present were Michael Benesch, Chad Huffine Tony Bailey and Jerome Bias. Alternates present were John Wooten. And James Stockert. Member absent Dean Ward. Staff members present were Cameron West, Planner, Bryan Coleman, City Attorney, and Debbie Jolly, Zoning/Inspections Technician.

Cameron West mention they needed to elected a temporary chair for tonight meeting. Cameron West welcome James Stockert to the board as an alternate. Chad Huffines made a motion to appoint Michael Bensch as the temporary chair. Tony Bailey second. All voted aye. The Chair called for a Motion to Approve the minutes from the June 20, 2023 Board of Adjustment Meeting. Jerome Bais moved to approve the minutes from June 20, 2023. Second by John Wooten. (Vote – aye 5, nay 0). Motion passed.

City Attorney, Bryan Coleman, read through the Quasi-Judicial Hearing guidelines prior to opening up discussion of the proposed Variance. Mrs. Jolly swore in the three applicants.

Chad Huffine requested to recuse himself from the board as he was assisting the applicant with the hearing. Jerome Bais made the motion to recuse Mr. Huffine. Seconded by Mr. Bailey (Vote - aye 3 nay 0). Motion Passed.

With Chair Ward being absent Jerome Bias made a motion to bring in alternate John Wooten Seconded by Tony Bailey. (Vote - aye 3, nay 0). Motion Passed. John Wooten was appointed on the Board in replacement of Dean Ward. With no ETJ alternate, Chad Huffine's position on the board could not be filled.

Cameron West, noted that the item could still be heard by the 4 Board of Adjustment members, but would need all 4 votes for the variance for it to be passed due to a super majority vote being needed in Board of Adjustment/Variance decisions.

Cameron West presented the project to the board VR2301: GFL/Waste Industries Accessory Building, An Application for a variance for the reduction of the front setback requirement in the I-2 zoning district. 1.The property that is the subject of this variance request, 703 E Gilbreath Street., GPIN: 8884409335, is zoned Heavy Industrial (I-2). (Exhibit 1) 2. The property contains a nonconforming warehouse building and storage yard for trash service. It also contains the accessory structure, which was erected without a site plan or building permit approvals. 3.The minimum front yard setback in the I-2 zoning district is 100 feet, as shown in Section 10.245 of the City of Graham Development Ordinance. (Exhibit 2) 4. The accessory structure is located 87 feet from the front property line, according to the site plan provided by the applicant. This is less than the 100 feet required by the Development Ordinance. (Exhibit 3) 5. The application for a variance was filed with the Planner on April 24, 2023. The applicant provided a site plan showing the location of the structure and notes the “converging easement and building lines” act as a hardship in this request. CONCLUSIONS OF LAW the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following: NOTE: These Conclusions of Law were prepared by staff and should be modified by the Board as it sees fit. 1.The application for Variance in case number VR2301, is properly before the Board of Adjustment who has jurisdiction to hear and determine this application. 2.The Board of Adjustment as constituted at the hearing is a fair and impartial board, without conflicts or ex parte communications. 3.Variances from zoning requirements can be allowed by the Board of Adjustments for the reasons set out in Section 10.97 (2) of the City of Graham development Ordinance. 4.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. Under the strict application of the ordinance, the property owner would have to tear down the structure and reconstruct/move the structure about 13 feet from the current location. The lot size according to the site plan provided is 225 feet by 664.30 feet. 5. 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 size of the lot is large enough to house the building within the required setback lines. 6. 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 structure was erected prior to any planning or inspections review. 7. 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. The request will permit a structure within the required front yard setback. Michael Benesch open the public hearing Edmund Larsey 703 E. Gilbreath St. from GFL presented his statement to the board. Chad Huffine 505 E Davis St. Burlington. Mr. Huffines presented to the BOA that the modular unit they purchased at the time was unaware they needed to pull permit, when he went to connect to water and sewer that's when he found this out. During inspection it was noted it was located beneath some overhead powerlines. The powerlines are in an easement. Mr. Huffines approach the board. Mr. Huffines present there finding of facts to the board 1) Unnecessary hardship would result from strict application of the ordinance.

An unnecessary hardship to the property owner would result from strict application of this ordinance as the location of any office expansion towards the working yard area is not practical. Any expansion into the working yard creates an increase in the potential for foot traffic vs. equipment traffic interferences.

Additional use of the working yard area portion of the property by office uses separate from the existing office use area is not desirable due to safety concerns where personnel are on foot in the working yard area where machines are working.

By utilizing this proposed specific area of the property (north of the existing office) further segregating the office uses from the working yard area uses can be promoted, existing safety protocols can remain in place, adequate service distance from outdoor electrical panels can be maintained, separation of employee foot traffic versus employee machine traffic can be maintained, and additional potential for the site specific interferences can be alleviated. 2) The hardship results from conditions that are peculiar to the property, such as the location, size, or topography of the property. The hardship results from conditions that are peculiar to the property. The construction of the existing Waste Industries (GFL) office and shop predates the creation of the City of Graham development ordinance. The presence of the overhead power transmission line and subsequent easement on this line creates a convergence to the existing building line creating an existing condition particular to the property. With increasing setback distance, the property line, overhead power easement, and existing building line converge to a width at which no use of the area in question can be made without creating an additional hardship or resulting in another dimensional or setback violation.

The application of the 1999 City of Graham UDO over existing site conditions increased the front set back to 100 ft. This application of the setback was not a result from any action of the applicant, any known deed

restrictions or development association conditions associated with the property. Furthermore, the petitioner has owned the property since 1990

predating the ordinance by 9 years. Combining factors of the overhead power line location, the change in front setback from 50' in force at the time of the initial construction to the current 100' front setback mandated by the ordinance, and the shape of the property, create a condition that is rare and unique to the subject site. 3) The hardship did not result from actions taken by the petitioner.

The previously referenced conditions specific to property boundaries, easements and building placement precede this ordinance, and were not actions taken by the petitioner. The petitioner simply desires to make use of the small portion of property specific to this request to accommodate an office use. This need would cause an increase in an existing nonconformity with the current development ordinance.

When orienting the building in the least conflicting way causes a conflict with the current development ordinance requirements, a variance request can be made to the Board of Adjustment. The application of the unified development ordinance dated subsequent to the construction of the existing building, the unique shape of the property with respect to Gilbreath Street and the presence of the overhead power line are not the result of petitioner actions.

An increase in nonconformity is, however, allowable by seeking a variance. Specific to setback from Gilbreath Street, the building proposed would be set back further than the existing building. Were it not for additional constraints specific to the site, the building could be oriented in a way to avoid seeking a variance. However, the presence of overhead power lines and their convergence with the existing building line create another site specific limitation. When determining the location of the building, considering all site conflicts in the specific area, and combining the safety goal to separate machine operations from office personnel, the proposed location was selected. The need to maintain a clear area under the overhead power lines and to provide adequate operational space to exterior utility panels further supports the proposed location. The unique combination of these factors gives the applicant the need to seek this variance request.

4) The requested variance is consistent with the spirit, purpose, and intent of this ordinance; will secure public safety and welfare; and will preserve substantial justice. As previously stated in the section above, no decrease in the existing setback distances are proposed. The proposed location of the office is further from Gilbreath Street than the existing office building. The requested variance is consistent with the intent of the ordinance to set back industrial uses from the front, property or right-of-way lines.

Specifically, the proposed building would be set back significantly farther from the right of way than the existing structure due to the geometry of the property and the departure of the Gilbreath Street right of way to the North. The granting of this ordinance variance request will not adversely affect the public health, safety and welfare, if granted, it will however, improve the operational and safety conditions on site. It will allow for the improvement of conditions for the employees specific to their safety and welfare during daily operations on the subject property. Chad shared the adopted date 1999.

This is the best location for the building. John Wooten ask for the spelling of Gilbert to Gilbreath Street to be correct. Mr. Huffines stated he would correct it. Jerome Bias ask why it couldn't be located in the northern corner. That are the drivers parking area and skid steers and machinery that

work on that side of the fence. Mr. Wooten stated it would still be in the 100 ft set back. Mr. Larsey stated that would not work for them. Cameron presented his qualifications. Chad Huffines presented his qualifications. Jerome Bais made a motion close the public hearing. Mr. Bailey seconded. All voted Aye. John Wooten understands the needs and the placement for the building and he has no problem with this. The board discussed the setback and the 100 ft set changing causing the hardship. Jerome Bias Jerome Bais made a motion to acknowledge that this application for a variance meets the requirements for point number four unnecessary hardship, that it also meets the requirements and needs for hardship conditions of the property, that the knowledge hardship is affecting the applicant irregardless of the applicant action it is the site not the applicant causing the problem. The applicant it is constant with the law. Mr. Bailey seconded. Vote was 3-1 Jerome Bias voted Nay

Michael Benesch asked if there were any non-agenda items of discussion. None were proposed. Michael Benesch asked for a motion to adjourn. Jerome Bias made the motion to adjourn. Aye voted Aye. Motion Passed. Meeting adjourned at 7:38 p.m.