



Board of Adjustment

Meeting Agenda

July 15, 2014

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

Invocation

1. Approve minutes of the June 17, 2014 meeting
2. Discuss Rules of Procedure

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

CITY OF GRAHAM
BOARD OF ADJUSTMENT
JUNE 17, 2014

There was a meeting called of the Board of Adjustment on Tuesday, June 17, 2014 at 7:00 pm in the Graham Municipal Building. Board members present were as follows: Bill Teer, Dean Ward, Ricky Hall and Bonnie Blalock. Michael Benesch was absent. Staff members present were Melissa Guilbeau, City Planner, and Martha Johnson, Zoning/Inspections Technician.

Invocation was given by Ricky Hall.

Chairman Ricky Hall called the meeting to order and explained the function of the Board stating the Board is reconvening from last month's meeting and that everyone that was sworn in is still under oath.

1. Bonnie Blalock made a motion to approve the minutes from the May 20, 2014, second by Bill Teer. All voted aye.

2. Variances for Shannon Dr Internet Marketing Center (VR142). Melissa Guilbeau stated this was a continuation from last month's meeting for a request of Brooks Realty Endeavors for a variance from the minimum distance from a church and from being located in the same building and on the same lot as another use, for a proposed "electronic, internet or sweepstakes gaming" use, on property located at 107 E Shannon Dr (GPIN 8883421261).

Ricky Hall made a motion to deny this request because he doesn't think it fits or is in the best interest of the City to have this operation here, seconded by Bill Teer. The vote was 4 to 0 denial of this request. The following seven Findings of Fact and four Conclusions of Law were adopted with the motion:

FINDINGS OF FACT

1. The property that is the subject of this variance request, 107 E Shannon Dr, is zoned General Business (B-2).
2. The property contains a commercial building that houses a garden center.
3. An "electronic, internet or sweepstakes gaming" use is being proposed to occupy the same building as the garden center. A Special Use Permit is required for this type of use in the B-2 zoning district and was filed with the City Planner on March 25, 2014. It was considered by the Planning Board on April 15, 2014, at which time the Planning Board tabled the issue until the next meeting on May 20, 2014.
4. The *City of Graham Development Ordinance*, in Section 10.149 Special uses listed "Electronic, Internet or Sweepstakes Gaming," outlines specific standards for this use. These standards include:

- No Electronic, Internet or Sweepstakes Gaming establishment shall be located closer than 1000 feet to a... church. All measurements shall be made by drawing straight lines from the nearest point of the lot line where the proposed Electronic, Internet or Sweepstakes Gaming establishment is to be located to the nearest point of the lot line or boundary of the closest... church.
 - No other principal or accessory use may occupy the same building, structure, property, or portion thereof with any Electronic, Internet or Sweepstakes Gaming establishment.
5. The lot where the proposed Electronic, Internet or Sweepstakes Gaming establishment is proposed is located 915 feet, as measured using the above-described method, from the lot occupied by a church at 1501 S Main St.
 6. The proposed Electronic, Internet or Sweepstakes Gaming establishment is proposed to occupy the same building and property as another principal use – an existing garden center.
 7. An application for a variance from these two requirements was filed with the City Planner on May 7, 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.
The proposed electronic, internet or sweepstakes gaming establishment would not be permitted if the ordinance is strictly applied.
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 property contains an existing building with an existing and continuing principal use (a garden center) and is located within 915 feet, as defined by the ordinance, of an existing church.
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, with knowledge of the standards of the ordinance, is proposing to locate an electronic, internet or sweepstakes gaming establishment on property that is located within 1000 feet of a church and in the same building and on the same property as another existing and continuing principal use.
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.
The variance, if granted, would permit a use to open in a location that does not meet the standards of the ordinance.

Melissa Guilbeau said the Board had requested rules of procedure and hopefully at the next meeting we will have a draft for the Board to review.

There being no further business, the meeting was adjourned.

Respectfully Submitted,
Martha Johnson, Secretary

**Rules of Procedure
Board of Adjustment
Graham, North Carolina**

I. General Rules

The Board of Adjustment shall follow procedures which are regular and properly judicial, and the Board's decisions shall be in accordance with the recognized body of zoning and land use law.

The Board shall comply with all procedures set forth in the State Statutes, the City of Graham Development Ordinances and these Rules of Procedure, which shall be effective upon enactment by the Board. In cases where the Rules of Procedure conflict with any Federal or North Carolina State Statute, or City Ordinance, said statutes and ordinances shall govern.

II. Officers and Duties

- A. Chair. The chair shall have the following powers and duties:
- i. To preside at all meetings and public hearings of the Board;
 - ii. To decide all points of order and procedure;
 - iii. To entertain and answer questions of parliamentary law or procedures;
 - iv. To call a brief recess at any time;
 - v. To adjourn in an emergency meeting;
 - vi. To certify rulings of the Board;
 - vii. To issue a subpoena under the direction of the Board;
 - viii. Shall exercise full voting rights on all matters under consideration.
- B. Vice-Chair. The Vice-Chair shall serve as acting Chair in the absence or disability of the Chair. At such time, he shall have and exercise the same powers and duties as the Chair.
- C. Secretary. The Secretary, also known as the clerk to the board, shall keep a record of all business transacted at any meeting of the Board.

III. Rules of Conduct for Members

- A. Members of the Board may be removed for cause, including violation of the rules stated below.
- B. Faithful attendance at the Board meetings and conscientious performance of the duties required of Board members shall be considered a prerequisite of continuing membership on the Board.
- C. No Board member shall take part in the hearing, consideration, or determination of any case in which he/she is personally or financially interested.
- D. No Board member shall vote on any matter that decides an application or appeal unless he has attended the public hearing on that application or appeal.

Comment [MG1]: What if the hearing is continued over more than one meeting and a board member was not at all of the hearings?

- E. No Board member shall discuss any case with any parties thereto before the public hearing on that case; provided, however, that member may receive and/or seek information pertaining to the case from any other member of the Board or its secretary or staff before the hearing.
- F. Members of the Board shall not express individual opinions on the proper judgment of any case with any parties thereto before that case is determined. Violation of this rule shall be cause for dismissal from the Board.

IV. Meetings

- A. Schedule. The Board shall meet on an as-needed basis when called by the Chair. In general, meetings will be held on the third Tuesday of the month immediately following the Planning Board meeting in the Council Chambers of City Hall, 201 South Main Street.
- B. Complete Applications. To request a hearing, a complete application on forms provided by the City must be submitted to the Planning Department at least fourteen calendar days prior to the scheduled Board meeting. All information required by the application form shall be complete before a matter may be scheduled for hearing.
- C. Order of Business. Items shall be placed on the agenda according to the Order of Business as listed below. However, by general consent of the Board of Adjustment, items may be considered out of order.
 - i. Approval of the minutes
 - ii. Discussion/adjustment of agenda
 - iii. Old business
 - iv. New business
 - a. Appeals
 - b. Variances
 - c. Other business
 - v. Administrative Reports
- D. Roberts Rules of Order. In the event of procedural issues not covered by these Rules of Procedure, the Board shall refer to the most recent edition of Roberts Rules of Order for guidance.

V. Hearing Procedures

For each case, the following procedures shall be used to the greatest practical extent:

- A. The Chair shall poll the Board as to whether any member has had ex parte communication or has any reason to be excused from participating in the hearing. Examples of ex parte communication that must be disclosed include...
- B. The Chair, or such person as they shall direct, shall give a preliminary statement of the request.



- C. The Chair shall ask that all persons wishing to provide evidence or arguments for the case identify themselves and step forward.
- D. All witnesses shall be placed under oath by the Chair or the clerk to the board. All witnesses shall sign the written oath and write their name and complete address.
- E. The staff shall present the application and applicable City ordinance provisions.
- F. Evidence and arguments shall be presented in the following order:
 - i. The applicant.
 - ii. Those in support.
 - iii. Those opposed.
- G. Both sides shall be permitted to cross-examine witnesses of the opposing party and to present rebuttal to opposing evidence and arguments.
- H. The Chair shall briefly summarize the evidence that has been presented, giving the parties opportunity to make objections or corrections.
- I. The Chair shall call for a motion to close the hearing.
- J. The Board shall discuss the evidence and arguments presented.
- K. The Board shall make a decision based upon the findings of fact and conclusions of law. If draft findings of fact were presented by the staff, the Board shall specifically state whether any shall be revised and the specific wording of the revisions.

VI. Records

- A. The secretary shall maintain a file of all studies, plans, reports, and recommendations made by the Board in the discharge of its duties and responsibilities.
- B. The minutes of the Board shall be known as unofficial minutes until approved by the Board, at which time they become official minutes.
- C. All records of the Board shall be public records, kept on file in the office of the Board, and available for inspection during regular business hours.

VII. Amendments

These Rules of Procedure may be amended by a majority vote of the Board of Adjustment provided that the proposed change shall have been submitted in writing at the previous regular meeting of the Board of Adjustment. Submissions to amend these Rules of Procedure may only be proposed by current Board of Adjustment members, City Council members, or City of Graham staff.

