



Board of Adjustment

Meeting Agenda

May 20, 2014 at 7:00pm
Council Chambers, 201 S Main St

Invocation

1. Approve minutes of the March 18, 2014 meeting
2. Variances for Shannon Dr Internet Marketing Center (VR142). 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).

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

CITY OF GRAHAM
BOARD OF ADJUSTMENT
March 18, 2014

There was a meeting called of the Board of Adjustment on Tuesday, March 18, 2014 at 7:00 pm following the Planning Zoning Board meeting in the Graham Municipal Building. Board members present were as follows: Bill Teer, Dean Ward, Ricky Hall and Michael Benesch, as well as Andy Rumley sitting as an alternate for Bonnie Blalock, who was not present. Staff members present were Melissa Guilbeau, City Planner, and Martha Johnson, Zoning/Inspections Technician.

Chairman Ricky Hall called the meeting to order and explained the function of the Board.

Ricky Hall asked that anyone wishing to speak come forward and be sworn in. Martha Johnson, Notary Public swore in E. Lawson Brown Jr. and Melissa Guilbeau.

Invocation was given by Ricky Hall.

1. Andy Rumley made a motion to approve the minutes from the January 21, 2014, second by Dean Ward. All voted aye.

2. Side Yard for Graham HFA (VR141). Request of Attorney for Graham HFA, LLC for a variance from the side yard setback for an existing building on property located at 611 W Whitsett St (GPIN 8874875827). Melissa Guilbeau stated the purpose of this request: "The building and its location were approved by the town and built in its current location. The side set back at eight feet is encroached by between seven tenths of a foot (0.7') to four tenths of a foot (0.4')".

Mr. Brown spoke representing Graham HFA, LLC. Mr. Brown stated that this organization is in the process of selling this property to the operators Brent and Beverly Howerton of Springview Care. Mr. Brown said they had the survey done and it showed the small encroachment. Mr. Brown said the variance if granted would preserve the spirit of the ordinance and certainly satisfy the public safety and welfare because the alternative would be for them to shave the edge of the building off which is the building on the right side where there is a sitting area in the back. This area is not occupied as a room and that is where the encroachment occurred.

Bill Teer made a motion to approve the variance, with the condition that 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, second by Andy Rumley. All voted in favor.

The following five 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, 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

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.

There being no further business, the meeting was adjourned.

Respectfully Submitted,
Martha Johnson, Secretary



STAFF REPORT

Prepared by Melissa Guilbeau, City Planner

Variances for Shannon Dr Internet Marketing Center (VR142)

Type of Request: Variance

Meeting Dates

Board of Adjustment on May 20, 2014

Contact Information

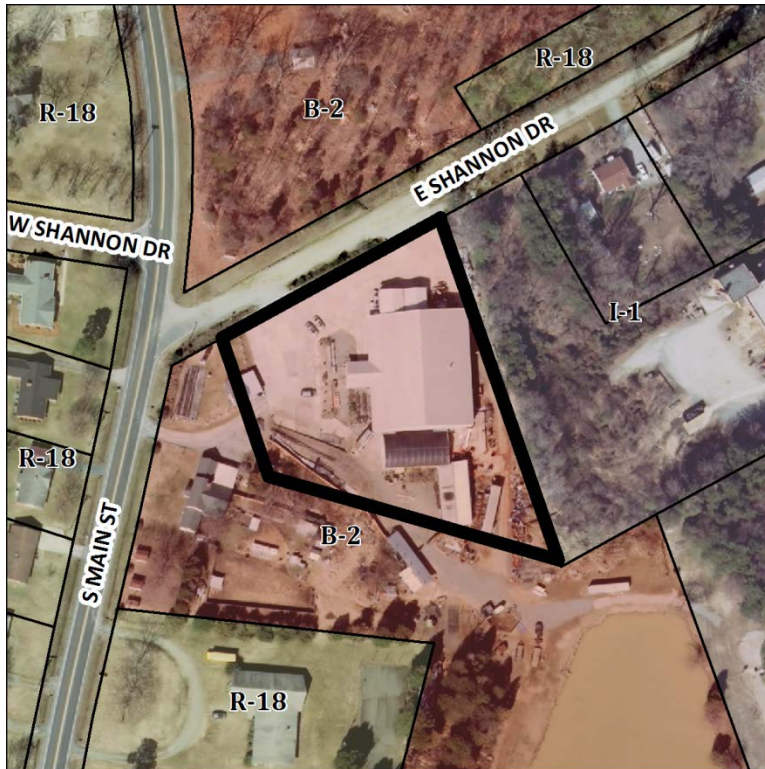
Brooks Realty Endeavors

107 E Shannon Dr, Graham, NC 27253

336-740-0709; chaselivelife@gmail.com

Summary

This is a request 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. The stated purpose of this request is “to open an Electronic Marketing Center that the planning board has labeled as an Internet café.” Additional purpose is described in the attachment to the application.



Location

107 E Shannon Dr

GPIN: 8883421261

Current Zoning

General Business (B-2)

Current Use

Garden Center

Surrounding Zoning

R-18, B-2 & I-1

Surrounding Land Uses

Single Family Houses, General Businesses and Industrial

Attached 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.



Application for a VARIANCE

P.O. Drawer 357
201 South Main Street
Graham, NC 27253
(336) 570-6705
Fax (336) 570-6703
www.cityofgraham.com

Applicants are encouraged to consult with the City Planner before submitting this application.

Property on which a Variance is sought

Street Address: 107 E SHANNON DR

Tax Map#: 144571 GPIN: 8883421261

Current Zoning District(s):

- R-7 R-9 R-12 R-15 R-18
- R-MF R-G C-R C-MXR
- B-1 B-2 B-3 C-B C-MXC
- O-I C-O-I I-1 I-2 C-I

Overlay District, if applicable:

- Historic S Main St/Hwy 87 E Harden St/Hwy 54

Current Use: Garden Center

Property Owner: Brooks Reality Endeavour

Mailing Address: 107 E SHANNON DR

City, State, Zip: GRAHAM, NC 27253

Purpose of Variance Request

Describe the purpose of this variance request. *What are you trying to do that the Development Ordinance is prohibiting?*
If necessary, attach a plot plan or other illustration.

SEE ATTACHMENT

RECEIVED

MAY 07 2014

CITY OF GRAHAM
INSP. / P.Z.

Applicant

Property Owner Other _____

Name: Brooks Reality Endeavour

Mailing Address: 107 E SHANNON DR

City, State, Zip: GRAHAM, NC 27253

Phone # 336-740-0709

Email: CHASELIVENLIFE@gmail.com

I, the applicant, hereby petition the Board of Adjustment for a variance from the strict letter of the *Development Ordinance*, as described in this application.

I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information and belief.

Chase Liven 05/05/14
Signature of Applicant Date

Nature of Variance Request

List the specific provision(s) of the *Development Ordinance* from which you are seeking a variance (for example, side yard setback).

SEE ATTACHMENT

Office Use Only. DEVID#

VR142

VR142

To all persons concerned;

Purpose of Variance Request:

The purpose of our Variance request is to open an Electronic Marketing Center that the planning board has label as an Internet café. In our company's eyes, we are not a traditional internet café. As a matter of fact we have a marketing product that has been patented both here in the United States and Internationally. We have introduced sections of this product slowly to sweepstakes customers in the past. Let me be clear we also use traditional sweepstakes so we can test our products in a sweepstakes environment and get feed back. To get this product off the ground we need a built in audience. Past sweepstakes customers provide this for us. Even our current sweepstakes products that we will use meet the new laws that the state has passed with a pre-reveal action that tells a customer what they have won before a game is played. We have a good relationship with the sheriff's Department and will comply with any request ask of us by them. Our company has worked on these new products for 28 months with a 2.7 million dollar investment. We employ over 45 people worldwide, with 12 here in Alamance County. We have three Pixar artist contracted with us and two DreamWorks's artists. Once all aspects of our products have been activated, our sales are truly unlimited. We hope to become a major employer for Alamance County. If this product launches nationally we have estimated we will have to employee over 1200 workers to support our advertising products. This new way of "Advertising Grass Roots Marketing " using smart phones could change the way small business' would compete with large box stores or chains. Our primary customer is a Woman. Over 80% of those woman are over 40. This group of society has very little history of law enforcement trouble. They are our mothers and grandmothers. We have found a way for them to interact socially and to work as a marketing force for our products.

Nature of our Variance Request;

The following presentation is to request a variance from two ordinances that apply to our special use permit at 107 East Shannon Dr. Graham, NC. Those two variances fall under section 10.149 of the graham ordinance standards.

The First Variance request is;

A deviation of the 1000 foot standard from a church. Our business is an estimated 940 feet as a crow flies from a church. We would like to state that angle is through mostly woods and is at an angle at the back part of the property. The two properties are completely out of visual site of one another. The road distance is over 1000 feet. We understand the purpose of this policy is to have harmony in the community. We do not think that our customers that are primarily female will disrupt that harmony. One of the owners has been a member the very same community for over 40 years.

The Second Variance is:

A deviation where our business is allowed to share a Multi-business building site. We ask for this variance because the same proprietor will own both business' so therefore we are aware of the positive and negatives of both business'.



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 **May 20, 2014** to consider **case number VR142**, submitted by **Brooks Realty Endeavors** of 107 E Shannon Dr, Graham, NC 27253, 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 for property located at 107 E Shannon 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

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 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:
 - o 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.
 - o 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.

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

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. 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.

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/denies] the variance that is the subject of this application.

[insert additional description of the Decision or any appropriate conditions, if necessary]

The resolution reflects the decision of the Board of Adjustment, made the 20th day of May, 2014.

Attest:

Ricky Hall, Chair

Martha Johnson, Secretary