



Board of Adjustment

Meeting Agenda

June 17, 2014 at 7:00pm
Council Chambers, 201 S Main St

Invocation

1. Approve minutes of the May 20, 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
MAY 20, 2014

There was a meeting called of the Board of Adjustment on Tuesday, May 20, 2014 at 7:00 pm in the Graham Municipal Building. Board members present were as follows: Bill Teer, Dean Ward, Ricky Hall, Michael Benesch and Bonnie Blalock. 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.

Invocation was given by Ricky Hall.

Ricky Hall asked that anyone wishing to speak come forward and be sworn in. Martha Johnson, Notary Public swore in Chase Brooks, Melissa Guilbeau and later in the meeting swore in Darryl Peebles.

1. Bonnie Blalock made a motion to approve the minutes from the March 18, 2014, second by Bill Teer. All voted aye.

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). Chase Brooks, owner of Brooks Realty Endeavors, spoke. He said this would be his test site and he would like to keep it in Alamance County. He then proceeded to show charts that he brought to the meeting. Mr. Brooks explained the function of his proposed use at the property at 107 E Shannon Dr. Mr. Brooks stated his goal is to put sweepstakes out of business.

Michael Benesch asked why he wanted to use that building and Mr. Brooks said it was because he owns it and the two businesses would fit together. Mr. Benesch said the Board is looking to see if it meets the variance as it is written. Mr. Brooks said he is using other sweepstake games to get that audience in there at this facility. Bonnie Blalock asked him if he had spoken to anyone from the church and Mr. Brooks said he hadn’t heard from anyone and his business would be out of sight from the church.

Dean Ward asked Ms. Guilbeau if she would display the meaning of sweepstakes in the *Development Ordinance* page 4-5. Mr. Ward asked Mr. Brooks what hardship he will incur if the variance was not permitted. Mr. Brooks stated he would definitely lose approximately \$75,000 he spent updating the building.

Darryl Peebles spoke next asking if Mr. Brooks did own both businesses and Ricky Hall replied yes. Mr. Peebles said if this business in question caused harm to the other business the person that would be suffering would be the same person. He feels that seems to be a reason for the variance.

Ricky Hall said with no one else to speak they would close the hearing and move forward with deliberations.

Dean Ward said he was having a hard time separating the difference between sweepstakes and what Mr. Brooks is proposing for his business. Bonnie Blalock agreed with Mr. Ward. Mr. Ward feels the business is more like marketing than sweepstakes and not sure if it is in direct conflict with our definition of sweepstakes.

Michael Benesch mentioned the footage from the church and Mr. Ward said it wouldn't come into play if this business isn't sweepstakes. Ricky Hall stated the business still falls under electronic gaming.

Dean Ward made a motion to continue the hearing until a called meeting is set or until next month's meeting in order to get legal clarification. Bill Teer seconded, all voted aye.

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

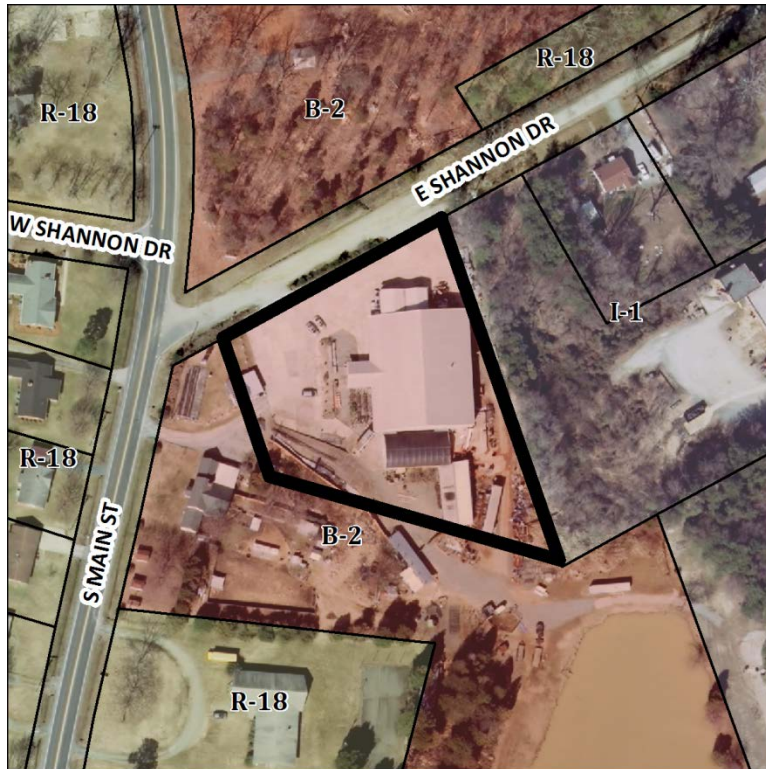
Brooks Realty Endeavors

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#: 144511 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 Endeavors

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 Endeavors

Mailing Address: 107 E SHANNON DR

City, State, Zip: GRAHAM, NC 27253

Phone # 336-740-0709

Email: CHASELIVELIFE79MAIL.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.

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

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:
 - 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.

[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