

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:
 - 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.

- 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