



# 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 and June 17, 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**

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.

**CONCLUSIONS OF LAW**

*The Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:*

- 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 denies the variance that is the subject of this application.

The resolution reflects the decision of the Board of Adjustment, made the 17<sup>th</sup> day of June, 2014.

Attest:

Ricky C. Hall  
Ricky Hall, Chair

Martha Johnson  
Martha Johnson, Secretary