

# City of Graham Planning Board

## Meeting Agenda

August 17<sup>th</sup>, 2021 at 7:00 PM  
Council Chambers, Graham City Hall

Meeting Called to Order, Invocation, and Overview of Board and general meeting rules

1. Approve minutes of the July 20, 2021 meeting

2. Old Business

a. Development Ordinance Amendments as recommended by City Council

- i. Special Use Permits- Hearings before the Board of Adjustment, Article 4, Division 7 (Sections 10.137 to 10.148).
- ii. Special Use Permits- Table of Permitted Uses
- iii. Extension of the Overlays to City Limits for Highway 87, 49, etc.
- iv. Overlay for Interstate 40/85 to remove warehousing and solar panels from parcels visible from the interstate
- v. Reevaluate the Land Use Classifications for all properties for landscaping purposes

b. Discussion of Subdivision Ordinances in the City of Graham Development Ordinance, Article VIII (Section 10.335 to 10.357).

3. Public comment on non-agenda items

Adjourn

*A complete agenda packet is available at [www.cityofgraham.com](http://www.cityofgraham.com)*

## PLANNING ZONING BOARD

Tuesday, July 20, 2021

The Planning & Zoning Board held their regular meeting on Tuesday, July 20, 2021, at 7:00 PM. Board members present were Dean Ward, Bobby Chin, Eric Crissman, Jerome Bias, and Michael Benesch. Members absent Justin Moody and Tony Bailey. Staff members present were Nathan Page and Debbie Jolly. Chair Ward called the meeting to order, gave the Overview of the Board, and general meeting rules.

1. Approval of the May 18, 2021 minutes. A motion was made to approve the minutes by Michael Benesch, seconded by Dean Ward. All voted in favor. Eric Crissman and Jerome Bias did not vote, as they were not present for the last meeting. Chairman Ward welcomed new member Jerome Bias.
  
2. New Business
  - a. CR2101 Gilbreath Multifamily. Application for Conditional Residential from Light Industrial for 484 dwelling units, apartments and townhomes, by Ben Green Hyconic Holdings LLC. 38 acres, GPIN 8883885270,8883872722 and 8883886903. Mr. Page gave an overview on the project to the board. Ben Green and Kevin Williams presented this project to the planning board. The board had several questions for Mr. Green and Mr. Williams. Comments were open to the public. The following individuals spoke on the matter:

Dewey Brown	E. Harden St.
Tom Boney	114 W Elm
Keith Michaels	205 Ivey Rd.
Janice McSherry	1047 Valley Dr.

Eric Crissman made a motion to table for 30 days. Jerome Bias seconded. 3-2 vote was denied, Dean Ward, Bobby Chin and Michael Benesch voted Nay. Bobby Chin made a motion to deny, is not fully consistent with The Graham 2035 Comprehensive Plan, Policy 5.1.1 does not the housing variety we are looking for. Michael Benesch seconded. All voted aye.
  
  - b. RZ2106 Maple and Mill. Application for rezoning of parcels to B-1 from R-7 by Jerry Smith Approx. 3.5 acres, GPINS 8884059566, 8884150571, 8884058556, 8884059880, 8884151700, 8884151602. Nathan gave an overview of the project. Jason Cox of 200 N Main St. represented the property owner. Mr. Cox answered several questions from the board. The following people spoke on this project.

Yevonka Barksdale	309 Mill St
John Lepri	531 N. Main St.
Jill Fuller	531 N. Main St.
Robert Drumright	Mill/W. Market St.
Janice McSherry	1047 Valley Dr.
Tom Boney	114 W Elm. St.
Cary Worthy	110 Albright Ave.
Janet Ecklebarger	604 Washington St.

Michael Benesch made a motion to approve the application as presented it is consistent with The Graham 2035 Comprehensive Plan. This amendment will allow for greater density adjacent to our downtown properties, creating additional walkable homes and businesses within our downtown. Eric Crissman seconded the motion. 3-2 vote was denied, Dean Ward, Bobby Chin and Jerome Bias voted Nay. Eric Crissman made a motion that City council send this back to The Planning board and the developer to reconsider the rezoning permit. Dean Ward seconded. All voted Aye.

c. Development Ordinance Amendment as recommended by City Council

i. Special Use Permits- Hearings before the Board of Adjustment, Article 4, Division 7 (Sections 10.137 to 10.148) ii. Special Use Permits- Table of Permitted Uses. Michael Benesch made a motion to table until next meeting. Bobby Chin Seconded. All voted Aye. iii. Extension of the Overlays to City Limits for Highway 87, 49, etc. iv. Overlay for Interstate 40/85 to remove warehousing and solar panels from parcels visible from the interstate v. Reevaluate the Land Use Classifications for all properties for landscaping purposes

3. Old Business

a. Discussion of Subdivision Ordinance in the City of Graham Development Ordinance, Article VIII (section 10.335 to 10.357). Dean Ward made a motion to table the above items until next month. Jerome Bias seconded. All voted Aye.

4. Public comment on non-agenda items- Zoom meeting and BOA meeting hearing. Look into witness being in person.

Eric Crissman made a motion to adjourn. Seconded Dean Ward. All voted Aye.

No further business the meeting was adjourned at 9:57

Respectfully Submitted,  
Debbie Jolly



# STAFF REPORT

Prepared by Nathan Page, Planning Director

## Text Amendment for: Special Use Permits

**Type of Request:** Text Amendment

### Meeting Dates

Planning Board on July 20, 2021

City Council on August 10, 2021

### Contact Information

N/A

### Summary

The City Council has requested the Planning Board evaluate the process for Special Use Permits, with the recommendation that they be sent to the Board of Adjustment to be heard once. Under the current process, the residents of the City have limited input and the City Council has limited discretion for Special Use Permits. In light of this, the current process leaves most residents feeling disconnected from the deliberations regarding these Quasi-Judicial Hearings.

Other jurisdictions in North Carolina have taken the step to evaluate what uses their Table of Permitted Uses has for Special Use Permits, as well as what limitations should be placed upon them (for example, a cell tower may be required to have all property lines as far away as the height of the tower). The Planning Board and Council may remove the requirement for Special Use Permits for all uses without specific standards, or add standards to those uses. For example, Bed and Breakfasts currently require a Special Use Permit in some zones, but have no standards with regards to capacity, parking, etc.

The draft language below places authority to hear and approve or deny the Special Use Permits with the Board of Adjustment, and such hearings only occur once, rather than going before the Planning Board and subsequently the City Council.

### Existing Language:

## DIVISION 7. SPECIAL USES

### Section 10.137 Purpose of special use regulations

Permitting special uses adds flexibility to the Zoning Ordinance. Subject to high standards of planning and design, certain property uses are allowed in districts where these uses would not otherwise be acceptable. By means of controls exercised through the Special use Permit procedure, property uses that would otherwise be undesirable in certain districts can be developed to minimize any undesirable effects they may have on surrounding properties.

### Project Name

Special Use Permits (AM2102)

### Location

city-wide

### Current Zoning

not applicable

### Proposed Zoning

not applicable

### Overlay District

not applicable

### Staff Recommendation

Approval

**Section 10.138 Special uses shown in Table of Permitted Uses**

Each use for which a special use permit is required is indicated in the Table of Permitted Uses, by an "S" in the column for a particular zoning district. The "S" indicates that such use may be placed in that zoning district only after a special use permit has been approved by the city council and issued by the zoning enforcement officer.

**Section 10.139 Application for a Special Use Permit**

Applicants for a special use permit are advised to confer with the Planner before formal application for a permit in order to ascertain what information must accompany the formal application. Applications for special use permits shall be submitted to the Planner. Depending on the character and size of the proposed use, a plot plan or a preliminary site plan may be required showing any or all of the following information, in addition to the specific conditions set forth under each special use:

- a. Vicinity map, showing the location of the property in relation to existing and proposed streets, streams, railroads and other major physical features.
- b. Location, size and type of all buildings, existing and proposed, on or near the property.
- c. Grading plan.
- d. Proposed points of vehicle ingress and egress, together with the proposed pattern of internal circulation.
- e. Proposed parking and loading areas.
- f. Landscape plan, showing the number, location, size and name of each plant species; and the proposed ground cover, especially on slopes, banks, and ditches. If the special use permit is approved, the landscape plan shall be carried out within one year of the date of issuance of the certificate of occupancy; landscaping shall be permanently maintained thereafter.
- g. Proposed provision for utilities.
- h. Location, size, height, orientation, and lighting information on all signs.

**Section 10.140 Timing of Submissions**

The applicant must submit the required plans and request for a special use permit on or before the 25<sup>th</sup> day of the month preceding the planning board meeting at which consideration is desired.

**Section 10.141 Role of Planning Board**

The planning board shall review applications for special use permits, together with accompanying plans, maps, and drawings. The planning board may recommend that the city council (1) deny the special use permit, or (2) approve the special use permit subject to the conditions for individual special uses, or (3) approve the special use permit subject to the conditions for individual special uses and other reasonable conditions recommended by the planning board. The planning board may also recommend modifications of the original plans.

**Section 10.142 Role of Historic Resources Commission**

As provided for in Section 10.205, the Historic Resources Commission is authorized to review and comment on special use applications for proposed uses within any historic district or historic landmark.

Recommendations and comments from the commission shall be relayed directly to the City Council for consideration along with the Planning Board's recommendations.

**Section 10.143            Role of City Council**

For each application for a special use permit the City Council shall hold a public hearing, notice of which shall be published in the same manner as required for a hearing on an amendment to this article. When deciding a special use permit, the City Council shall follow quasi-judicial procedures as required by law. At the public hearing the City Council shall review the application for a special use permit, together with accompanying plans, maps, and drawings. Recommendations of the planning board shall be heard. The City Council may (1) deny the special use permit, or (2) grant the special use permit subject to the conditions for individual special uses, or (3) grant the special use permit subject to the conditions specified for each use listed in Section 10.149 (Special uses listed) and to other reasonable conditions the council imposes upon the permit. Subject to S.L 2019-111, Pt. I, the City Council shall not impose conditions on special use permits that the local government does not otherwise have statutory authority to impose. The Council shall obtain the applicant or land owner's written consent to conditions related to a special use permit to ensure enforceability. There shall be competent, material and substantial evidence in the record to support the Council's findings of facts and conclusions. No vote greater than a majority vote shall be required for the City Council to issue special use permits. Vacant positions on the City Council and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the City Council' for calculation of the requisite majority.

*(Section 10.143 amended 7/11/2006)*

**Section 10.144            Findings**

In granting a special use permit, the council shall find that all of the conditions listed below have been met, or it shall be denied.

- (1) That all applicable regulations of the zoning district in which the use is proposed are complied with.
- (2) That conditions specific to each use, identified by this Ordinance are complied with.
- (3) That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted.
- (4) That the use will not substantially injure the value of adjoining property or that the use is a public necessity.
- (5) That the location and character of the use if developed according to the plan as submitted will be in harmony with the area in which it is to be located and in general conformity with the plan of development for the Graham planning area.
- (6) That satisfactory provision has been made for the following, when applicable: vehicle circulation, parking and loading, service entrances and areas, screening, utilities, signs and lighting, and open space.

**Section 10.145            Conditions added by Council, Limitations**

In granting a Special Use Permit, the Council may designate only those conditions, in addition to those already contained in this ordinance or proposed by the applicant, that will, in its opinion, assure that the

use in its proposed location will be harmonious with the area. Examples of such additional conditions include landscaping or buffer provisions, conditions related to on-premises signage, conditions to reduce traffic congestion and other conditions directly related to the land use impact of the use on the area. The city council may modify the original plans to reflect such conditions which shall be entered into the minutes of the meeting at which the permit is granted.

**Section 10.146                    Conditions run with land**

All special use conditions shall run with the land and shall be binding on the original applicants, their heirs, successors and assigns. In voting on a request for a special use permit, a vote by the majority of the City Council membership shall be required to grant the request.

**Section 10.147                    Appeal**

No appeal may be taken to the board of adjustment from the action of the city council in granting or denying a special use permit. The city council's action on an application for a special use permit, like the council's action on an application for an amendment to the ordinance, shall be reviewable by the courts as provided by law.

**Section 10.148                    Invalidation**

In the event of failure to comply with the plans approved by the city council or with any other condition imposed by the city council upon the special use permit, the permit shall immediately become void and of no effect. No further building permits or certificates of occupancy shall be issued, and completed structures shall be regarded as nonconforming uses. A special use permit shall become null and void 24 months after the date of its issuance unless construction is begun during the twenty-four-month period.

**Proposed Language:**

**DIVISION 7. SPECIAL USES**

**Section 10.137                    Purpose of special use regulations**

Permitting special uses adds flexibility to the Zoning Ordinance. Subject to high standards of planning and design, certain property uses are allowed in districts where these uses would not otherwise be acceptable. By means of controls exercised through the Special use Permit procedure, property uses that would otherwise be undesirable in certain districts can be developed to minimize any undesirable effects they may have on surrounding properties.

**Section 10.138                    Special uses shown in Table of Permitted Uses**

Each use for which a special use permit is required is indicated in the Table of Permitted Uses, by an "S" in the column for a particular zoning district. The "S" indicates that such use may be placed in that zoning district only after a special use permit has been approved by the Board of Adjustment and issued by the zoning enforcement officer.

**Section 10.139                    Application for a Special Use Permit**

Applicants for a special use permit are advised to confer with the Planner before formal application for a permit in order to ascertain what information must accompany the formal application. Applications for special use permits shall be submitted to the Planner. Depending on the character and size of the proposed use, a plot plan or a preliminary site plan may be required showing any or all of the following information, in addition to the specific conditions set forth under each special use:

- a. Vicinity map, showing the location of the property in relation to existing and proposed streets, streams, railroads and other major physical features.
- b. Location, size and type of all buildings, existing and proposed, on or near the property.
- c. Grading plan.
- d. Proposed points of vehicle ingress and egress, together with the proposed pattern of internal circulation.
- e. Proposed parking and loading areas.
- f. Landscape plan, showing the number, location, size and name of each plant species; and the proposed ground cover, especially on slopes, banks, and ditches. If the special use permit is approved, the landscape plan shall be carried out within one year of the date of issuance of the certificate of occupancy; landscaping shall be permanently maintained thereafter.
- g. Proposed provision for utilities.
- h. Location, size, height, orientation, and lighting information on all signs.

**Section 10.140                    Timing of Submissions**

The applicant must submit the required plans and request for a special use permit on or before the 25<sup>th</sup> day of the month preceding the planning board meeting at which consideration is desired.

**Section 10.141                    Reserved.**

**~~Section 10.141                    Role of Planning Board~~**

~~The planning board shall review applications for special use permits, together with accompanying plans, maps, and drawings. The planning board may recommend that the city council (1) deny the special use permit, or (2) approve the special use permit subject to the conditions for individual special uses, or (3) approve the special use permit subject to the conditions for individual special uses and other reasonable conditions recommended by the planning board. The planning board may also recommend modifications of the original plans.~~

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As provided for in Section 10.205, the Historic Resources Commission is authorized to review and comment on special use applications for proposed uses within any historic district or historic landmark. Recommendations and comments from the commission shall be relayed directly to the Board of Adjustment for consideration along with the Planning Board's recommendations.

**Section 10.143                    Role of Board of Adjustment**

For each application for a special use permit the Board of Adjustment, supported by staff and counsel, shall hold a public hearing, notice of which shall be published in the same manner as required for a hearing on an amendment to this article. When deciding a special use permit, the Board of Adjustment shall follow quasi-judicial procedures as required by law. At the public hearing the Board of Adjustment shall review the application for a special use permit, together with accompanying plans, maps, and drawings. Recommendations of the Historic Resources Commission, if applicable, shall be heard. The Board of Adjustment may (1) deny the special use permit, or (2) grant the special use permit subject to



the conditions for individual special uses, or (3) grant the special use permit subject to the conditions specified for each use listed in Section 10.149 (Special uses listed) and to other reasonable conditions the Board of Adjustment imposes upon the permit. Subject to S.L 2019-111, Pt. I, the Board of Adjustment shall not impose conditions on special use permits that the local government does not otherwise have statutory authority to impose. The Board of Adjustment shall obtain the applicant or land owner's written consent to conditions related to a special use permit to ensure enforceability. There shall be competent, material and substantial evidence in the record to support the Board of Adjustment's findings of facts and conclusions. No vote greater than a majority vote shall be required for the Board of Adjustment to issue special use permits. Vacant positions on the Board of Adjustment and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the Board of Adjustment for calculation of the requisite majority.

*(Section 10.143 amended 7/11/2006)*

#### **Section 10.144 Findings**

In granting a special use permit, the Board of Adjustment shall find that all of the conditions listed below have been met, or it shall be denied.

- (1) That all applicable regulations of the zoning district in which the use is proposed are complied with.
- (2) That conditions specific to each use, identified by this Ordinance are complied with.
- (3) That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted.
- (4) That the use will not substantially injure the value of adjoining property or that the use is a public necessity.
- (5) That the location and character of the use if developed according to the plan as submitted will be in harmony with the area in which it is to be located and in general conformity with the plan of development for the Graham planning area.
- (6) That satisfactory provision has been made for the following, when applicable: vehicle circulation, parking and loading, service entrances and areas, screening, utilities, signs and lighting, and open space.

#### **Section 10.145 Conditions added by Board of Adjustment, Limitations**

In granting a Special Use Permit, the Board may designate only those conditions, in addition to those already contained in this ordinance or proposed by the applicant, that will, in its opinion, assure that the use in its proposed location will be harmonious with the area. Examples of such additional conditions include landscaping or buffer provisions, conditions related to on-premises signage, conditions to reduce traffic congestion and other conditions directly related to the land use impact of the use on the area. The Board of Adjustment may modify the original plans to reflect such conditions which shall be entered into the minutes of the meeting at which the permit is granted.

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All special use conditions shall run with the land and shall be binding on the original applicants, their heirs, successors and assigns. In voting on a request for a special use permit, a vote by the majority of the Board of Adjustment membership shall be required to grant the request.

**Section 10.147                    Appeal**

No appeal may be taken to the City Council from the action of the Board of Adjustment in granting or denying a special use permit. The Board of Adjustment’s action on an application for a special use permit, like the Board’s action on an application for an appeal or variance, shall be reviewable by the courts as provided by law.

**Section 10.148                    Invalidation**

In the event of failure to comply with the plans approved by the Board of Adjustment or with any other condition imposed by the Board of Adjustment upon the special use permit, the permit shall immediately become void and of no effect. No further building permits or certificates of occupancy shall be issued, and completed structures shall be regarded as nonconforming uses. A special use permit shall become null and void 24 months after the date of its issuance unless construction is begun during the twenty-four-month period.

**Conformity to The Graham 2035 Comprehensive Plan and Other Adopted Plans**

**Applicable Planning District Policies and Recommendations**

- Not applicable; city-wide.

<p><b><u>Planning District</u></b> All</p> <p><b><u>Development Type</u></b> All</p>
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**Staff Recommendation**

Based on *The Graham 2035 Comprehensive Plan*, other jurisdictions and best practices, **staff recommends approval of the text amendment.** The following supports this recommendation:

- Placing authority for Special Use Permits with the Board of Adjustment will reduce the number of quasi-judicial hearings before the City Council, thus allowing them to be more engaged in the democratic process of public input and legislative discretion.



# PLANNING BOARD Recommendation & Statement of Consistency

*Per NCGS 160A-383, zoning regulations shall be made in accordance with an adopted comprehensive plan and any other officially adopted plan that is applicable. The Planning Board shall advise and comment on whether the proposed amendment is consistent with "The Graham 2035 Comprehensive Plan" and any other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the City Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with "The Graham 2035 Comprehensive Plan" shall not preclude consideration or approval of the proposed amendment by the City Council.*

**Special Use Permits (AM2101)**  
**Type of Request**  
Text Amendment  
**Meeting Dates**  
Planning Board on 7/20, 8/17 2021  
City Council on 8/10, 9/14 2021

- I move to **recommend APPROVAL** of the application as presented.
- I move to **recommend APPROVAL** of the alternative language, as proposed by the Planning Board.
- I move to **recommend DENIAL**.

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- The application is **consistent** with *The Graham 2035 Comprehensive Plan*.
  - The application is **not fully consistent** with *The Graham 2035 Comprehensive Plan*.

The action is reasonable and in the public interest for the following reasons:

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This report reflects the recommendation of the Planning Board, this the 17<sup>st</sup> day of August, 2021.

Attest:

\_\_\_\_\_  
Dean Ward, Planning Board Chair

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Debbie Jolly, Secretary