

**CITY OF WINTER HAVEN
BOARD OF ADJUSTMENT MEETING MINUTES
June 2, 2011**

PRESENT: Steve Enzor, Chair
Macy V. Butler (arrived at 7:11 pm)
Justin Hill
Henry Schaus
Roosevelt Smith, Vice-Chair
Jonathan Winfree

ABSENT: none

STAFF: Erin Tilghman, Planning Manager
Sean Byers, Senior Planner
Bethany Owen, Executive Assistant
Seth Claytor, City Attorney's Office

PUBLIC: none

The regular monthly meeting of the Winter Haven Board of Adjustment was held on Thursday, June 2, 2011, at 7:00 p.m. in the John Fuller Auditorium, 451 Third Street, N.W., Winter Haven, Florida.

1. Call to Order and Roll Call

Steve Enzor, Chair, called the meeting to order at 7:00 p.m. A roll call reflected a quorum present.

2. Pledge of Allegiance

Mr. Enzor led the Pledge of Allegiance.

3. Approval of April 28, 2011 Minutes

The minutes of the April 28, 2011, meeting were presented for approval. A motion for approval was made by Roosevelt Smith and Jonathan Winfree seconded. A voice vote reflected approval of the minutes.

4. New Business

A. Case Number BOA-11-03-V: Request by Isidro Becerra and Maria Bernal to reduce the setback for a driveway from the property line from 5 feet to 0 feet. **General Location:** 340 Fourth Street, SE. **Legal Description:** The North 60 feet of Lot 25 and the North 60 feet of Lot 26 in Block A of College Heights Coker and Buzbee Addition, Plat Book 3, Page 78, lying in Section 28, Township 28, Range 26, Polk County, Florida. **Zoning:** Multi-Family Residential (R-3).

Sean Byers, Senior Planner, gave an overview of the request, showed via a slideshow presentation, the property involved in the request and surrounding areas, and indicated that staff has no objection to the granting of the request if the Board finds that all conditions have been met. Mr. Byers stated for the record that all notification requirements have been met.

BACKGROUND:

Isidro Becerra and Maria Bernal, the applicants, are requesting that the Board of Adjustment reduce the setback for a driveway from the property line from 5 feet to 0 feet. The property is located at 340 Fourth Street, SE and consists of a single-family residence constructed in 1965. The lot measures 60 wide by 100 feet deep and meets the minimum requirements for the Multi-family Residential (R-3) zoning district. There is an unpaved east-west alley running along the northern lot line.

In April, the applicants were contacted by Code Enforcement concerning the construction of a driveway expansion within five (5) feet of the property line. The driveway was expanded by approximately 250 square feet to provide space to park a second car on the property. Due to the presence of several trees immediately in front of the house, the applicant added on to the north side of the driveway.

Due to site constraints, there are limited options for constructing additional parking on the applicants' lot. Based on measurements from aerial photographs, the setback to the front of the existing single car carport is approximately 15 feet. At 15 feet, there is insufficient distance to properly park a second car without overhanging the sidewalk or interfering with the front yard fence. The lack of space to accommodate the parking of a second car does not appear to be as a result of actions by the applicant. The use of on-street parking is not permitted along this portion of Fourth Street, SE.

The ownership and parking of two vehicles on a property is relatively common within the City. As the subject property lies within a multi-family zoning district, multiple housing units are permitted to be constructed on the lots within this neighborhood. A survey of the applicants' neighborhood found that a majority of the multi-family properties have sufficient room to park multiple cars. The fact that the applicants' are having problems parking a second car on a lot only containing a single-family residence, is an indication of the specific site limitations on this lot.

Section 21-422 of the Code of Ordinances allows the Board of Adjustment to grant a variance to the accessory structure setback provided the following six criteria are met:

- a. Special conditions and circumstances exist that are peculiar to the land, structure, or building involved and that are not applicable to other lands, structures, or buildings in the same land use classification;
- b. The special conditions and circumstances do not result from the actions of the applicant;

- c. The requested variance, if approved, will not confer on the applicant any special privilege that is denied by the provisions of this Code to other lands, buildings, or structures in the same land use classification;
- d. Literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by other properties in the identical land use classification and will constitute an unnecessary and undue hardship on the applicant;
- e. That the variance granted is the minimum variance that will make possible a reasonable use of the land, building, or structure;
- f. That the granting of the variance will be in harmony with the general intent and purpose of this Code, and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

SURROUNDING USES:

Uses surrounding the petitioner's lot are described by the following table:

Northwest Grace Lutheran Church	North Daycare	Northeast Single-Family Residential
West Grace Lutheran Church School	Subject Property Single-Family Residential	East Single-Family Residential
Southwest Grace Lutheran Church School	South Multi-Family Residential	Southeast Single-Family Residential

NOTIFICATION:

All public notification requirements have been met.

Steve Enzor closed the Board of Adjustment meeting and opened the Public Hearing. Mr. Enzor asked all those wishing to speak to come to the podium, sign in, and be sworn in.

Annette Mena, of 241 Avenue L, NE, Winter Haven, Florida, was sworn in. One of the applicants, Isidro Becerra, of 340 Fourth Street, SE, Winter Haven, Florida, was also sworn in. As Mr. Becerra's primary language is Spanish, he asked Ms. Mena to speak on his behalf and to interpret for him. Ms. Mena informed the Board of past parking issues which resulted in the theft of a vehicle from an alley on the north side of the

property, warnings from the daycare across the street for parking, and the towing of a vehicle. She stated that Mr. Becerra added onto the driveway himself in an effort to create a solution for the parking issue. She stated that he was unaware that a permit to do so was required. Mr. Byers clarified that Mr. Becerra has since applied for a permit which is pending the Board's decision in this case.

Steve Enzor asked Ms. Mena if Mr. Becerra understood that the case would be decided by the Board but the issues of construction would be handled through the Building Division. It was confirmed that he did understand.

Macy V. Butler asked to clarify if the driveway was already completed and if the applicant had done the work himself. Mr. Byers confirmed that the driveway is done. Ms. Mena confirmed that the applicant poured the driveway himself, but added that he used measurements given to him by the County.

Mr. Enzor asked if there were any other questions for the applicant. Seeing and hearing none, Mr. Enzor closed the public hearing and reopened the Board meeting.

Mr. Enzor asked if Seth Claytor from the City Attorney's Office had anything to add. Mr. Claytor advised that if the Board finds that the answers to the questions have been made in good faith based on the evidence presented that a variance can be granted.

Mr. Butler asked Mr. Byers if there was evidence to contradict that the applicant was given measurements by the City. Mr. Byers stated that he was not aware of this and therefore had not looked into it. He also indicated that he did not know where he could have received the information. (Note: After the meeting, City staff verified that Mr. Becerra was not given measurements by the City, only setback requirements.) Mr. Enzor advised Mr. Butler that staff had presented their report prior to the applicant's representative speaking.

A motion was made by Steve Enzor to approve the variance request finding that the six (6) criteria contained in Code of Ordinances Section 21-422 have been found to be met, and a variance be granted in Case BOA-11-03-V. Macy V. Butler seconded the motion. The motion carried 5-1 by a roll call vote with Henry Schaus casting the dissenting vote.

6. Comments From Board of Adjustment/Staff

Sean Byers informed the Board that there may be a meeting on July 7, 2011. Mr. Byers also advised the Board that they should receive their annual financial disclosure forms shortly and reminded them to complete and return them as soon as possible.

8. Adjournment

With no further business, a motion to adjourn was made by Roosevelt Smith and seconded by Jonathan Winfree. A voice vote reflected all in favor and the meeting adjourned at 7:20 p.m.

Steve Enzor, Chair

Bethany Owen, Executive Assistant

WINTER HAVEN

The Chain of Lakes City

CITY OF WINTER HAVEN APPLICATION FOR VARIANCE

451 Third Street, NW
Winter Haven, Florida 33881
Telephone: 863-291-5891
Fax: 863-397-3090

The following information is required for submission of a Variance application. The Board of Adjustment normally meets the first Thursday of each month at 7:00 p.m. to consider such requests. It is important that all information be complete and accurate when submitted to the City.

Please print or type the requested information below.

Name of Applicant/Property Owner: Dr. Gerard Hubbell - Gerard Hubbell

Mailing Address: 1600 South Lake Mirror Dr. NW

Phone (Work): 688-6197 Phone (Home): 293-3580

Zoning/Future Land Use of Property: _____

Location of Property _____

Legal Description of the Property (attach metes and bounds description if applicable)
Lot(s): _____, Block: _____, Subdivision: _____, Section: _____

Township _____, Range _____, Parcel _____, Total Acreage _____

VARIANCE(S) REQUESTED:

(See plans and enclosed explanations)

Street Side yard from 20 ft to 13 ft

For City Use Only:

Application Deadline: 7/28/11

Date Received: 7/21/11

Received By: SHB

Fee Received: _____

Receipt Number: _____

Case Number: BOA-11-04-V

Date Accepted: _____

Hearing Date: Sept 1

The following questions must be answered by the Applicant. The Board of Adjustment can grant no variance unless it finds that ALL the following grounds or circumstances exist:

1. Please specify any special conditions and circumstances, that exist which are peculiar to the land, structure, or building involved, and that are not applicable to other lands, structures, or buildings in the same land use classification.

This specific piece of property sits on a corner lot and the building is not centered on the lot. If this were an infill lot and not a corner lot, the proposed addition would meet setback requirements and be compliant.

2. Do the special conditions and circumstances exist as a result of the actions of the applicant?

NO. The house was constructed prior to the homeowners taking occupancy.

3. If the requested variance is approved, will the variance confer on the applicant any special privilege that is denied by the provisions of the City's code to other lands, buildings, or structures in the same land use classification?

NO. Granting the variance will allow us to construct a building that will fit in well with other buildings in its classification.

4. How would the literal interpretation of the provisions of the City's code deprive the applicant of rights commonly enjoyed by other properties in the identical land use classification? How will it constitute an unnecessary and undue hardship on the applicant?

This home sits on a corner lot and the house is not centered, but situated on the left hand side. The setback requirements for a corner lot are such that there is not sufficient room to build the addition and still meet those requirements. Elderly parents need a bedroom and bath on the main floor

5. What is the minimum variance necessary to make possible a reasonable use of the land, building or structure?

We need a minimum of 13 ft. to meet our request.

6. How will the granting of the variance be in harmony with the general intent and purpose of the City's code? How will granting the variance not be injurious to the area involved or otherwise be detrimental to the public welfare?

Granting this variance, in accordance with the proposed building plans, will be a great asset to the neighborhood and city as a whole. The house sits on a corner lot and the variance footage we are requesting still leaves more room than the setback for an infill lot and will sit more squarely on the lot

7. Please provide any other comments or further information necessary to explain your request.

The homeowner has designed the floor plan for this addition to accommodate specific home healthcare equipment for her ~~two~~ ailing mother and father. Granting this variance request will greatly help in creating a functional space that will both support and beautify the neighborhood and be a benefit to the homeowner's physical needs.

(Homeowner had a stroke and needs a Lift to the second floor master bedroom.) Elevator/lift specifications are part of the plans - in building dept. - MR. Wayne Beasley.

STATE OF FLORIDA:
COUNTY OF POLK:

I, Dr. Gerard Hubbell, _____, as the property owner and _____, as the property owner's authorized agent, state that the information contained in this application is true, accurate and correct, and give our permission and consent to the City of Winter Haven to submit and process this application on our behalf.

Dr. Gerard Hubbell Mike Musick Contractor 7-21-2011
Property Owner Authorized Agent Date

If you are the owner of the subject property, and will represent this application before the Board, complete the following:

(I) (WE) Dr. Gerard Hubbell being duly sworn, depose and say that (I) (WE) own one or more of the properties involved in this petition and that (I) (WE) have familiarized (myself) (ourselves) with the rules and regulations of the Board of Adjustment with respect to preparing and filing this petition and that the foregoing statements and answers herein contained and other information attached hereto present the arguments in behalf of the petition herein requested to the best of (my) (our) ability and that the statement and information above referred to are in all respects true and correct to the best of (my) (our) knowledge and belief.

SIGNED: Dr. Gerard A. Hubbell

SIGNED: _____

STATE OF FLORIDA:
COUNTY OF POLK:

The foregoing instrument was acknowledged before me this 21 day of July, 2011, by _____, who (is) (are) personally known to me or who (has) (have) produced _____ as identification and who (did) (did not) take an oath.

Signature of Notary Public

Typed or Printed Name of Notary Public

Notary Public Serial #, if any

Date My Commission Expires

If you are making this application as agent or lessee of the subject property owner, complete the following:

STATE OF FLORIDA:
COUNTY OF POLK:

(I) (WE), De Gerard Hubbell
being duly sworn, depose and say that (I) (WE) serve as (Agent) (Lessee) _____
for the owner(s) in making this petition and that the owner(s) (has) (have) authorized (me) (us) to
act in this capacity. (I) (WE) have familiarized (myself) (ourselves) with the rules and
regulations of the Board of Adjustment with respect to preparing and filing this petition and that
the foregoing statements and answers herein contained and other information attached hereto
present the arguments in behalf of the petition requested to the best of (my) (our) knowledge and
belief.

SIGNED: S Hubbell

SIGNED: _____

STATE OF FLORIDA:
COUNTY OF POLK:

The foregoing instrument was acknowledged before me this 21 day of July
2011, by GERARD HUDSON HUBBELL who (is) (are) personally known to me or
who (has) (have) produced FDC as identification and
who (did) (did not) take an oath.

Bethany Owen
Signature of Notary Public
BETHANY OWEN
Typed or Printed Name of Notary Public



Nov 17, 2012

Notary Public Serial #, if any _____

Date My Commission Expires _____

ADDITIONAL INSTRUCTIONS AND EXHIBITS

Applicants are welcome and encouraged to contact the Planning staff at (863) 291-5891 from 8:00 a.m. to 5:00 p.m. Monday through Friday to discuss any questions they may have concerning the variance application and hearing process. It is also helpful, but not required, to schedule an application submission time with the Planning staff so they can work with you to explain the variance application review and hearing process. We want to ensure that all applicants understand the review process, the Board of Adjustment meeting schedule and that variance applications must be complete upon submission. Accomplishing these tasks helps both the public and city staff to work together smoothly.

Applicants should answer all six variance criteria questions on pages 2 and 3 to the best of their ability, since these criteria are used by the Board of Adjustment (BOA) as the basis for granting or denying a variance request. You must demonstrate to the BOA that you meet all six criteria to be able to obtain a variance approval.

Please be advised that application fees are normally nonrefundable. Application fees are used to help offset the cost of mailing hearing notices to the public, advertising the case in the newspaper and application review/processing costs.

Also be advised that the Board of Adjustment meets on an as needed basis, normally on the first Thursday of the month. The normal meeting time is 7:00 p.m. Board of Adjustment meetings are open to the public and are held in the John Fuller Auditorium in the Winter Haven City Hall, located at 451 3rd St. NW, Winter Haven, FL.

Please come prepared to fully explain your request to the Board of Adjustment and to answer questions concerning your application. Applicants may also appoint an authorized agent to act fully on their behalf using the attached authorization form. City staff will contact you by mail or phone prior to the applicable Board of Adjustment meeting to inform you of your meeting date and time. You may also request a copy of the city staff application review packet prior to the meeting for your use.

PLEASE SUBMIT THE FOLLOWING REQUIRED EXHIBITS:

A completed application signed by the property owner and/or authorized agent, if applicable.

A check or money order, payable to the City of Winter Haven to pay the required application fee. Please contact the Planning and Development staff for the current application fee amount.

A property survey for properties or parcels containing a building or structure when such building or structure will be affected by a proposed variance request. The survey will be used to help determine the location, nature, and relative impacts of the proposed building or structure variance request.

For vacant properties, a property survey or surveyor's sketch of property description or scaled drawing of the property showing the property boundaries, proposed buildings or structures involved and other information needed to illustrate the requested variance(s) is needed. Please contact the Planning Department to determine the most appropriate way to illustrate and explain your request prior to application submission.

Questions or comments may be addressed to:

**Planning Department
City of Winter Haven
451 Third Street, NW
Winter Haven, Florida 33881**

Or

**P.O. Box 2277
Winter Haven, Florida 33883**

**Telephone: (863) 291-5891
Fax: (863) 297-3090**

Sec. 21-418. Appeal of special use approval decision.

Any person or persons aggrieved by a special approval decision made by the planning commission, may within thirty (30) days after the date of the public hearing at which the decision was rendered but not thereafter, apply to the courts for relief in the manner provided by the laws of the State of Florida.

(Ord. No. O-00-19, § 2, 7-10-00)

Secs. 21-419, 21-420. Reserved.

DIVISION 8. VARIANCE**Sec. 21-421. Generally.**

A variance is an approved modification to the development standards established by this code. A variance may only be granted for height, area, size of structure or size of yards and open spaces, or other dimensional requirements. Once granted, the variance runs with the land in perpetuity, even if the land changes ownership. The request for a variance is considered and approved or denied by the board of adjustment and, if approved, adopted by resolution. The city's planning department shall keep a file in perpetuity on all variances approved by the board of adjustment.

The board of adjustment shall have the power to hear and decide requests for variances where by reason of exception or narrowness, shallowness or unusual shape of a site, or by reason of exceptional topographic or environmental conditions, or some other extraordinary situation or condition of that site but not dwelling unit or population density. The board of adjustment may impose any reasonable conditions or restrictions in granting said variance. (Ord. No. O-00-09, Art. 7 (7.08.00), 4-24-00)

Sec. 21-422. Criteria for granting a variance.

The granting of a variance shall be based on a determination by the board of adjustment that the request will not be contrary to the public interest and the intent of this code, and that strict enforcement of the regulation in question would create an undue and unnecessary hardship for the applicant. Considerations of health, convenience or economics shall not be considered as justification for a variance. For each variance granted, the board of adjustment shall approve, and the chairman shall sign, a resolution listing criteria (a) through (f) below and attesting that each has been considered. No variance from the terms of this ULDC shall be authorized by the board of adjustment unless the board finds that all of the following facts and conditions exist.

- (a) Special conditions and circumstances exist that are peculiar to the land, structure, or building involved and that are not applicable to other lands, structures, or buildings in the same land use classification;
- (b) The special conditions and circumstances do not result from the actions of the applicant;

- (c) The requested variance, if approved, will not confer on the applicant any special privilege that is denied by the provisions of this code to other lands, buildings, or structures in the same land use classification;
 - (d) Literal interpretation of the provisions of this code would deprive the applicant of rights commonly enjoyed by other properties in the identical land use classification and will constitute an unnecessary and undue hardship on the applicant;
 - (e) That the variance granted is the minimum variance that will make possible a reasonable use of the land, building, or structure;
 - (f) That the granting of the variance will be in harmony with the general intent and purpose of this code, and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.
- (Ord. No. O-00-09, Art. 7 (7.08.01), 4-24-00; Ord. No. O-01-10, § 1, 3-12-01)

Secs. 21-423—21-430. Reserved.

DIVISION 9. NONCONFORMITIES

Sec. 21-431. Generally.

The purpose of this article is to set forth limitations and standards for the continuation, modification, improvement or abatement of properties, structures and uses which do not conform to current zoning regulations.

It is the intent of this section to permit existing legal nonconforming uses, properties and structures to continue until they are removed or discontinued, but not to encourage their survival.

A legal nonconforming use, property or structure is one that met all zoning laws and regulations at the time it was initially established, but became nonconforming because of a subsequent change in the law. All references in this article to nonconforming uses, properties and structures refers to such legal nonconformities.

No license or permit shall be issued for the use of any premises or the operation of any business, enterprise, occupation, trade, profession or activity which would involve in any way or constitute a violation of this article. Occupational licenses may be renewed annually for continued operation of nonconforming use in compliance with this article.
(Ord. No. O-00-09, Art. 7 (7.09.00), 4-24-00)

Sec. 21-432. Nonconforming buildings.

(a) No building permit shall be issued for the erection, expansion, alteration or use of any building or structure or part thereof, or for the use of any land or water which is not in conformity with all the provisions of this chapter.