



**Appeal of Variance #2023-03
City Council Staff Report
March 21, 2023**

Case: Variance #2023-03
Applicant: Mark E George & Stephen N George
Address: 5308 Lemon Street
Request: A reduction in required parking from 11 spaces to 8 spaces, which includes the approval of two (2) of those proposed spaces being substandard
Proposed Use: Entertainment/Restaurant
Staff Contact: Lisa Algieri, Senior Planner, 727-853-1050
algierel@cityofnewportrichey.org

Statements of Fact

Property Location: 0.15 acres located on the south side of Lemon Street
Zoning: Highway Commercial
Future Land Use: Highway Commercial
Existing Use: Vacant Building
Code References: Section 7.09.00 and Section 5.03.00 of the Land Development Code

Analysis

Existing Conditions:

The 0.15 acre property is located on the South side of Lemon Street between US Highway 19 and River Road. There are commercial properties to the north, south, east and west of the subject property. Residential properties lie to the east of River Road.

The property contains a single family house built in 1954. At one time the area west of River Road was residential. As US Highway 19 expanded the residential use became impractical and the area was zoned Highway Commercial.

The lots which were previously residential are small which limits the uses for those properties. Although the Highway Commercial zoning district allows for many types of commercial uses, the small properties will be limited to less intensive uses based on the lack of space for parking on-site.

The front yard of the parcel can accommodate a total of six (6) parking spaces. In January 2021, the Development Review Committee (DRC) denied parking in the rear yard as there was insufficient space to access this area.

Recently, seven (7) parallel parking spaces have been added for public use along the north side of Lemon Street. Ten (10) parallel parking spaces have been added for public use along the south side of Locust Place which is the next road north of Lemon Street.

The LDC does provide a parking exception for properties in the Downtown Zoning District that allows for a percentage of adjacent parking spaces to be applied toward the required number of parking

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spaces for a development (LDC 11.06.00). However the subject property is not in this zoning district and therefore these additional on-street parking spaces have not been considered.

Proposal:

The applicant is proposing a restaurant/music venue. The City's parking code for a restaurant is 1 space/100 sf of floor area. The building is 1,192 sf, which would require 11 parking spaces for the restaurant.

The proposed development includes six (6) parking spaces across the front of the property with additional spaces stacked in a second row in front of the proposed parking on each side of the property. The six (6) spaces can meet city code for uses that require 1 space/200 sf of floor area. However, the two (2) stacked spaces do not meet code. Additionally, the stacked space on the east side of the property does not meet required size for a parking space.

The applicant met with the DRC and presented his request and future plans. He stated that his business model is to offer a venue for musicians to play to a small audience in a restaurant setting, i.e. a songwriters café. The seating capacity for the restaurant is 16 seats. The applicant informed DRC that his future plans include adding 20 outdoor seats and hosting small concerts that could host approximately 60 attendees.

The applicant expressed a desire to use on-street parking spaces which did not exist at the time of this application.

The applicant also expressed an interest in purchasing the adjacent property to the west to use for his guitar retail business and to combine parking. As of this date, the applicant has not submitted plans showing this proposal.

Criteria

To authorize any variance from the terms of an ordinance, the following criteria shall be used as a guideline to determine a hardship:

1. That special conditions or circumstances that exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;

- There are no special conditions or circumstances. The lot can meet the parking code for uses requiring 1 space/200 sf of floor area.

2. That the special conditions and circumstances do not result from the actions of the applicant;

- There are no special conditions or circumstances.

3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, buildings or structures in the same zoning district;

- Granting of the variance will confer on the applicant the special privilege of reduced parking for an intensive use. Parking is available for less intensive uses of the property.

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4. *That literal interpretation of the provisions of the ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the ordinance would work unnecessary and undue hardships on the applicant;*

- Literal interpretation of the city code will not deprive the applicant the right to use the property. The applicant can use the building for less intensive uses.

5. *That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;*

- The applicant can meet the city parking code for a less intensive use and would not need a variance.

6. *That the grant of the variance will be in harmony with the general intent and purpose of the ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.*

- A variance is intended to be granted only when there is a hardship with the land which makes it difficult to meet the existing code. There is no hardship with the land that prevents the applicant from meeting the existing code.
- The intent of the parking code is to provide adequate parking on-site for each business. An intensive use such as the one proposed by the applicant will cause excessive parking in the streets which will negatively affect adjacent businesses and the adjacent residential neighborhood. Additionally, traffic flow will be hindered and lines of sight obstructed creating a public safety hazard.

Summary and Recommendation

Development Review Committee

The LDC requires that all parking spaces be provided on the same parcel of land as the proposed use. In cases where there are not suitable spaces available, the owner/developer must apply for a parking variance as established in this code (LDC 11.05.00.1).

The Development Review Committee reviewed the variance request and found a hardship does not exist. The DRC **recommended denial** of the request.

LDRB Review

The Board conducted a quasi-judicial review of this case at its February 16, 2023 meeting. The Board unanimously **approved** the request citing merits of the business and the desire for continued economic development in the City.

City Council

When the DRC and LDRB reach different decisions, an appeal is automatically advanced to the City Council for consideration (LDC 5.03.02).

Therefore this variance is appealed to the City Council for a final decision on this matter.

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Attachments:

- A. Location Map and Aerial Photo
- B. Variance Application VAR2023-03
- C. Site Plan

LOCATION MAP AND AERIAL PHOTO





VARIANCE APPLICATION

City of New Port Richey
 Development Department
 City Hall, 5919 Main Street, 1stFloor
 New Port Richey, FL 34652
 Phone (727) 853-1047 * Fax (727) 853-1052

Attachment B - Variance Application

CASE # _____
 DRC date(s) _____
 LDRB date _____
 Council date (if difference between DRC/LDRB action or a sign request greater the 5') _____
 Date Received: _____

- Submit one original signed and notarized application
- Submit application fee, \$750 commercial, \$500 Residential, \$750 sign, checks made payable to the *City of New Port Richey*

Property Owner and Representative Information:

Current Property Owner(s): Mark E & Stephen N George		Phone: 570.510.4701
Owner Address 6224 Spoonbill Drive New Port Richey FL 34652		
Owner Email Address: megaviationinc@gmail.com		
Owner's Representative(s): Mark George	Relationship to Owner: Owner / Self	
Representative Mailing Address: 6224 Spoonbill Drive New Port Richey F: 34652		
Representative Email Address: megaviationinc@gmail.com	Phone: 570.510.4701	
Primary contact: <i>(This is the <u>one</u> person to whom the City will send all communication regarding this application)</i> Alexandra Silansky, RA (Project Architect): 703.638.5289 asilansky@gmail.com		

Property Information:

Site Address: 5308 Lemon St New Port Richey FL		
General Location: Within City of NPR boundary, US Hwy 19N and Lemon St.		
Size of Site:	Square Feet: 6137sf	Acres: 0.149
Legal Description of Subject Property: C E Crafts Sub #7 PB 2 PG 58 Lot 18 & East 15 FT of Lot 5 Block 3		
Parcel Number(s): 08-26-16-0280-00300-0055		
Zoning District: <i>(Planning and Development Department will complete this section):</i>	Future Land Use Category: <i>(Planning and Development Department will complete this section):</i>	
Existing Use and Size: <i>(Existing number of dwelling units or square footage of non-residential uses on the property)</i> One (1) 1,092gsf vacant commercial structure		

Proposed Use: <i>(Proposed number of dwelling units or square footage of non-residential uses if different than existing use)</i> Business to occupy existing vacant structure as Restaurant (A-3) use, to feature occasional live music as singer/songwriter workshop space		
Does applicant/owner own property contiguous to this site?	Yes	<input type="checkbox"/> No
If yes, provide address and legal description of contiguous property:		
Has any previous variance or appeal been filed regarding this property?	Yes	<input type="checkbox"/> No
If yes, state the nature of the application/appeal and outcome:		
Has a Development Order or Certificate of Occupancy been refused?	Yes	<input type="checkbox"/> No

Submittal Information:

Please submit collated, stapled, folded set of the following information:	
	Completed, notarized application - this form
	Proof of ownership in the form of a copy of the deed, title insurance policy, or other instrument demonstrating ownership
	Current signed and sealed survey of property (if necessary):
	Plot plan/site plan with the following (if necessary):
	North point
	Drawn to scale
	Property dimensions
	All existing and proposed structures and use of each
	Distances between setbacks from all property lines
	Abutting streets and other public easements
	Off-street parking spaces
	Specific variance in terms of horizontal setback (show <u>measurable required</u> setback and <u>proposed</u> setbacks)
	Photographs of existing buildings, structures, signage or other applicable objects on site
	Drawing of proposed signage: dimensions, height square footage and setback (for sign variances only)
	Depth measurement at high and low tide (provide clear photos showing measurements that relate to the subject property) (for dock variances only)
	Drawing of proposed dock on a copy of the survey (for dock variances only)
	Application fee (checks made payable to the City of New Port Richey)

Guidelines For The Granting of Variances:

<p>Please state the specific variance request(s). (Example: <i>Five-foot variance to reduce front setback along Main Street from 25 feet to 20 feet, for a fence</i>) Seeking variance for total number of required parking spaces for restaurant use (use allowed by right per zoning) and using Lemon St for in/out access from provided parking spaces. Per zoning code, 1/100gsf = 11 required spaces, which is technically infeasible on this lot. The lot was previously a single family dwelling/R zoning that has since been re-zoned to HWY-COM which allows the proposed use but is requiring an intensive parking lot that cannot fit. We can achieve 6-8 spaces if cars are permitted to use Lemon St to pull in/out of each parking space. Additionally, there is a nearby public parking garage within 1/2 mile of site.</p>
<p>The following questions must be addressed with supporting argument and/or documentation. A variance is considered to allow the applicant relief from the literal requirements of the ordinance because of an unnecessary hardship. A variance is a relation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where a literal enforcement of the ordinance would result in unnecessary and undue hardship. Neither the Land Development Review Board nor the City Council is authorized to grant a variance to establish or expand a use that is not permitted in the particular zoning district. Variances to density cannot be granted unless specifically provided for in the Land Development Code. Variances may only be granted for height, area, size of structure, setback, etc.</p>

In stating the grounds for support of the application, an unnecessary hardship must be shown. This is a hardship that is peculiar to the specific land, structure or building involved and hardship that is not shared generally with other properties, or most, in the same zoning district. An economic hardship does not qualify as a justification for granting a variance (i.e. it is too expensive to build it that way). It is very important to show how your particular situation differs from others and how that situation provides a unique, undue and unnecessary hardship on your property.

You should show that the hardship does not exist because of your own actions and that granting the variance will not confer special privileges that are not enjoyed by other property owners. You should show that granting the variance will not adversely affect other properties and/or the character of the zoning district. The Land Development Review Board or City Council cannot grant a variance that may be detrimental to the public interest.

The LDRB or Council may attach appropriate and reasonable safeguards, or conditions, to the granting of a variance. These conditions are a part of the approval and strict conformance must be observed. The LDRB and Council are not bound to grant a variance simply because a request is made. The applicant must show the facts and the law applicable to this situation. A carefully prepared application listing the grounds on which the variance is sought is a prime requisite to possible favorable Board or Council action.

Variance Criteria:

All of the following six criteria must be met before a variance can be granted. Space is provided for the applicant's response to each criterion. Attach additional sheets as necessary. The Land Development Review Board or City Council must find:

1. That special conditions or circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district. (*Explain what of these conditions make your situation different from other properties*):

Lemon St was previously a residential neighborhood road, with parcels configured as single family homes on 1/4 acre or smaller lots. This area has been re-zoned to a hwy-com zone considering its proximity to Hwy 19. However, per the land development code, hwy-com zones require an intensive parking count for the proposed use that cannot be achieved on the lot in question, as it is a residential sized lot due its original use/zoning. Other properties in this zoned area are far larger to account for the vast parking lots associated with such intensively zoned areas for strip malls, etc that run along Hwy 19. The 3-4 properties on Lemon St are similarly impacted to the lot in question, limiting their functional commercial use even if the proposed use is allowable by right per the Land Development and Zoning Codes.

The proposed use as a restaurant/music venue (A-3 occupant load) is a use by right per zoning; it is the parking count that prevents such a use on this lot; 1 per 100gsf @ 1092gsf = 11 required spaces. Additionally, the requirement of all parking to have in/out access directly on the lot (ie, drive aisles) only adds to the technical infeasibility of fitting all of the required elements to accommodate vehicles on this residential sized lot.

2. That the special conditions and circumstances do not result from the actions of the applicant (*Explain how the situation was created*)

At some point, a decision was made by the City of NPR to re-zone the properties on this street and similar side streets immediately adjacent to US Hwy 19 from single family residences/neighborhood areas to commercial zone HWY-COM. This inherently adds a more intensive parking requirement onto lots that are significantly smaller than other properties in the same zone. Thus, limiting the functional use of these commercial properties.

3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, buildings or structures in the same zoning district (*Is what you want to do something special that other properties in the same zoning have not been allowed to do?*)

Granting this parking variance does not confer any special privilege, as other similarly zoned properties are adequately sized in order to accommodate the intensive parking requirements set forth in land development codes for commercial/assembly type uses. The existing business immediately adjacent to the lot in question is a B occupancy and thus is not as negatively impacted by the parking county requirements. Allowing the subject property to reduce the number of required parking spaces does not confer any special privileges, rather it grants the owner the basic property right to occupy and open a business that is an allowable use by right.

4. That the literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district, and under the terms of the ordinance would create unnecessary and undue hardships on the applicant (*Is what you want to do something that is regularly done on other properties in the same zoning district and, if so, how does the ordinance prevent you from doing so?*)

The proposed concept of a restaurant/songwriter workshop venue is an A-3 occupancy and use by right in the hwy-com zone. However, it is the parking count tabulation requirement set forth in the zoning code requiring 1 space per 100 gsf that is infeasible on this particular lot due to its previous zoning/use and size (residential). Additionally, the requirement of on-site access (ie parking lot drive alleys) only compounds this fit issue. This is a condition unique to this property and not typically observed on other hwy-com lots, which are much larger properties that account for larger parking lots for strip malls and high occupancy uses.

5. That the variance granted is the minimum variance that will make it possible the reasonable use of the land, building or structure (*Have you explored all other options to do what you want to do and found that the variance you are seeking is for the least amount necessary?*)

The property was purchased for the intended use of restaurant/A-3, which is an allowable use by right. This is the owner's business that is allowed to operate within this zoned area and will be a great asset to the City itself. There is no other way to occupy the property as intended without the parking variance for which we are applying.

6. That the granting of the variance will be in harmony with the general intent and purpose of the ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare (*Will what you are proposing have any negative effects on your neighbors or any other property or to public property, and if not why?*)

Because Lemon St properties are all in the same hwy-com zone, there is no negative effect to surrounding properties if the variance is granted. In fact, the music recording studio business directly adjacent to the subject property will be enhanced, as the proposed business includes live music and singer/songwriter workshops. The two entities will surely draw similar patrons and be able to play off each other's offerings to serve the public in all things music related.

Process:

A pre-application meeting must be held with City Staff to ensure the application is complete. Applications must be submitted by Friday at 10:00 am, and deemed complete, to be scheduled for review by the Development Review Committee (DRC), which is regularly scheduled on Thursdays. Case reviews are generally scheduled two weeks out from the date of submittal, and your attendance or that of your representative is required. The DRC will review the application for compliance of codes and regulations, and may require additional information, necessitating additional DRC meetings. Following the DRC, the case will be scheduled for review by the Land Development Review Board (LDRB) or City Council.

The hearing process to review this application is considered quasi-judicial and operates much like a court of law. The LDRB and City Council members act in a similar capacity as a judge and must govern themselves in accordance with the basics of due process in making decisions. Contact with any of these members about this application should be avoided. These members have been instructed to avoid all such conversations with applicants or people in opposition to or support of any Variance Application. Decisions will be made based on evidence and testimony that is presented at scheduled public hearings and not on information gathered outside of these hearings.

Attendance at meetings:

The applicant or applicant's representative needs to be present at all meetings including DRC, LDRB and/or City Council. Call Development Department Staff at 727-853-1047 to find out when this case will be scheduled for these meetings.

Authorization to visit the property:

Site visits to the property by City representatives are essential to process this application. The Owner/Applicant, as notarized below, hereby authorizes the City representatives to visit, photograph and post a notice on the property described in this application.

Authorization for owner's representative:

I _____, the **owner**, hereby **authorize**

_____ **to act as my representative(s)** in all matters pertaining to the processing and review of this application, including modifying the project. I agree to be bound by all representations and agreements made by the designated representative.

Signature of Current Property Owner(s): _____

Date: _____

Subscribed and sworn to before me this _____ day of _____, 20_____

who is personally known to me and/or produced _____ as identification.

STATE OF FLORIDA, COUNTY OF PASCO

Notary Public: _____

My Commission Expires: _____

Applicant's Affidavit:

I _____, **the owner or authorized representative**, certify that I have read and understand the contents of this application. The information contained in this application, attached exhibits and other information submitted is complete and in all aspects true and correct, to the best of my knowledge. It is also acknowledged that the filing of this application does not constitute automatic approval of the request and, further, if the request is approved, I will obtain all necessary permits to comply with all applicable orders, codes, conditions, and rules and regulations pertaining to the use of the subject property. (Applications which are filed by corporations must bear the seal of the corporation over the signature of an officer authorized to act on behalf of the corporation.)

Signature of Owner or Authorized Representative: _____

Date: _____

Subscribed and sworn to before me this _____ day of _____, 20_____

who is personally known to me and/or produced _____ as identification.

STATE OF FLORIDA, COUNTY OF PASCO

Notary Public: _____

My Commission Expires: _____

