



CITY COUNCIL AGENDA FORM

REQUESTED COUNCIL MEETING DATE 9/19/06

**SUBJECT: APPEAL OF PLANNING COMMISSION DECISION/
VANHORN VARIANCE - CASE NO. 06-90000016**

DEPARTMENT: COMMUNITY DEVELOPMENT

RECOMMENDED MOTION: No staff recommendation is provided.

SUMMARY: Stanley Van Horn, applicant/owner, requested approval of a variance from Chapter 17, Section 27, of the City of Port Orange Land Development Code (LDC), pertaining to minimum rear yard setback for the "R-7SF" zoning district. The purpose of the request was to reduce the rear yard setback to allow an existing accessory structure to remain located 4 feet from the property line in lieu of the 26.8 feet required by Code. If approved, the owner intended to leave the existing accessory structure in its current location

PLANNING COMMISSION ACTION: On August 24, 2006, the Planning Commission denied the request, 6-0 (McMasters excused). The Commissioners that voted no did so because the request failed to meet the variance criteria required by Chapter 19, Section 1(g)(2), LDC, that would justify approval.

According to LDC Chapter 19, Section 1(f), the Council's decision to reverse or uphold the Planning Commission's decision shall be based on the facts of the case presented during the Planning Commission meeting, the review criteria established for variance requests, and the Commission's decision on the requested variance. **No new evidence may be presented, heard, or discussed.** Any new information must be presented as part of a new variance request. Please see the attached appeal request letter from the owner.

ATTACHMENTS: Ordinance Resolution Budget Resolution

Other Support Documents/Contracts Available for Review in Manager's Office

DEPARTMENT HEAD	<i>R. W. Wells</i> Richard Wells Community Development Director	Date <i>9/8/06</i>
CITY ATTORNEY	<i>M. J. Kest</i> Approved as to Form and Legality	Date <i>9-8-06</i>
CITY MANAGER	<i>B. J. Kest</i> Approved Agenda Item For: <i>9/19</i>	<i>09-11-06</i>

COUNCIL ACTION: Approved as Recommended Disapproved
 Tabled Indefinitely Continued to Date Certain Approved with Modification

403 S. Willow Ave
Port Orange
Florida
32127
8/31/06

To whom it may concern,
I Stanley Van Horn I'm writing
to you to request for an appeal
for the City planning Commissions
Decision of Denial

Thank you

RE VARIANCE CASE NO. 06-90000016/403 S. Willow AVE

RECEIVED

AUG 31 2006

CITY OF PORT ORANGE
COMMUNITY DEVELOPMENT



STAFF REPORT

CASE NO. 06-9000016

VARIANCE/LDC Chapter 17, Section 27

Variance to allow an accessory structure to be placed 4' from the rear property line, in lieu of the required 26.8' required by the LDC.

Stanley Van Horn, Owner/Applicant

403 S. Willow Ave.

August 15, 2006

INTRODUCTION:

Stanley Van Horn, owner/applicant, requests approval of a variance from Chapter 17, Section 27, of the City of Port Orange Land Development Code (LDC) pertaining to setbacks for the "R-7SF" (Single Family Residential) zoning district. The requested variance is to allow a detached storage building placed 4' from the rear property line in lieu of the 26.8-foot minimum rear building setback required by the LDC. If the variance request is approved, the applicant is proposing to leave a 20' by 24' detached storage building in his backyard as currently placed. The subject property is located at 403 S. Willow Avenue in the Harbor Oaks Subdivision (Exhibit "A").

BACKGROUND:

The subject property is zoned "R-7SF" (Single Family Residential). As per Chapter 17, Section 27, of the Land Development Code (LDC), the required building setbacks are 25 feet in the front, 5 feet on the side for lots less than 70 feet in width, and 20% of the depth of the lot in the rear.

The applicant's property measures approximately 70 feet in width by 134.2 feet in depth (+/- 9,394 sq. ft.) as shown on the attached survey (Exhibit "B"). The lot is currently improved with a one-story single-family detached dwelling. In addition to the home, there is a 102 sq. ft. shed and 480 sq. ft. detached storage building within the rear yard of the property. The structure pertaining to this variance measures 20 feet by 24 feet (+/- 480 sq. ft.) and encroaches 22.8 feet into the 26.8-foot required rear yard setback (20% of the depth of the lot) (Exhibit "B").

In April 2006, Code Enforcement responded to a complaint against the applicant for working without a permit. The applicant then came in to city hall in June to discuss with staff what could be done. After deliberating on whether to move it, the applicant decided to request a variance. According to the applicant's letter of request (Exhibit "C"), the structure was built to code 6 years ago. However, staff cannot determine if the structure is up to code because the applicant never acquired a building permit. The applicant also included a letter signed by his neighbors abutting the rear and west sides of his property in support of the current location of the shed (Exhibit "D").

Chapter 16, section 5, of the LDC provides special setbacks for specific accessory structures. Storage buildings 120 square feet or less are only required to be set back 5 feet from rear and side property lines. Storage buildings 121 to 250 square feet are required to be set back 10 feet from the rear and side property lines. However, once a structure goes above 250 sq. ft. in area, it is no longer qualified as an accessory

structure. It is then considered to be a detached portion of the primary structure and must meet the full building setbacks for the zoning district in which the property is located.

REVIEW OF VARIANCE CRITERIA:

Chapter 19, Section 1, LDC, lists the review criteria that shall be used to determine whether a variance request should be granted. These criteria, accompanied by staff's response, are as follows:

- a) *Special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are not applicable to other lands, structure or buildings in the same zoning district.*

There are no special circumstances that exist which are peculiar to the subject property. The property meets and exceeds all of the dimensional requirements for the "R-7SF" zoning district. The lot size in particular exceeds the minimum required by 1,894 sq. ft. The applicant has room to accommodate the structure while still meeting the required rear yard setback.

- b) *The special conditions and circumstances are not result of actions of the applicant.*

As noted, there are no special circumstances associated with the subject lot.

- c) *Literal interpretation and enforcement of the land development code regulation would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under terms of the development code, and would work unnecessary and undue hardship on the applicant.*

Literal interpretation of the Land Development Code *would not* deprive the applicants of rights commonly enjoyed by other properties within the same zoning district. When reviewing a variance request, staff looks at whether the applicants already have reasonable use of the property, i.e., whether there is a primary structure on the property and an access point to a road. In this case, the applicants have a primary structure and access to the property. Although the LDC does prohibit the current placement of the shed, this is not considered a significant hardship on the applicant, since these requirements are applied consistently to all residences in this zoning district.

- d) *The variance, if granted, is the minimum variance necessary to make possible the reasonable use of the land, building or structure.*

As discussed above, the applicant already has reasonable use of the land and building. The variance requested by the applicant is not necessary to make reasonable use of the land as they already have a principle structure on the property. As mentioned above, the applicant does have room to accommodate a 480 square feet structure and meet the required rear yard setback of 26.8'. The

applicant has the option to move the structure to meet the setbacks or at least move the structure to decrease the request for variance. The applicant could also reduce the size of the structure to 250 sq. ft. or less. Therefore, a variance is **not required** to make reasonable use of the land, building or structure.

- e) *Granting of the variance request will not confer on the applicant any special privilege that is denied by the development code to other lands, buildings or structures in the same zoning district.*

Granting the variance request to allow the structure in the required rear yard setback **would** convey special privileges to the applicant that are denied to other properties within the same zoning district. Any new accessory structure over 250 square feet is required to meet the current building setbacks for that zoning district. No hardship with the land itself has been proven to warrant this variance request.

- f) *The granting of the variance will be in harmony with the general intent and purpose of this code, and will not be injurious to the surrounding properties or detrimental to the public welfare.*

Granting of this variance **would not** be in harmony with the general intent of the Land Development Code. The LDC provides setbacks to supply buffering, privacy, and access between homes and accessory structures. This detached storage building encroaches into the rear building setback, to an extent of the total building size, in an area that is supposed to be reserved for a usable rear yard area as well as any drainage that may occur on the property.

- g) *The variance represents a reasonable disposition of a claim brought under the Bert J. Harris Private Property Rights Protection Act, chapter 95-181, Laws of Florida, that a development order of the city has unreasonably burdened the applicant's property, based upon the recommendations of the special master appointed in accordance with the act, or the order of a court as described in the act.*

This variance request is not based upon a claim brought under the Bert J. Harris Private Property Rights Protection Act.

RECOMMENDATION:

In reviewing the variance request from Chapter 17, Section 27, LDC, it is staff's professional determination that not all possible alternatives allowed by Code have been exhausted. The applicants have the ability to move the structure to accommodate the 26.8-foot rear yard setback requirement. For this reason and because the variance criteria have not been satisfied, staff must recommend **denial** of the request. However, should the commission wish to approve the variance, staff recommends **approval** upon the following conditions:

1. The applicant must apply for a building permit with the City of Port Orange building department within two weeks of this meeting date, pay the associated fee for working without a permit, and have a final inspection conducted by the City of Port Orange building department.
2. The duration of the variance be limited to the life of the structure and the size/extent of the variance to the structure in question at its current location.

Prepared by: Gwen Perney, Planner
City of Port Orange Department of Community Development

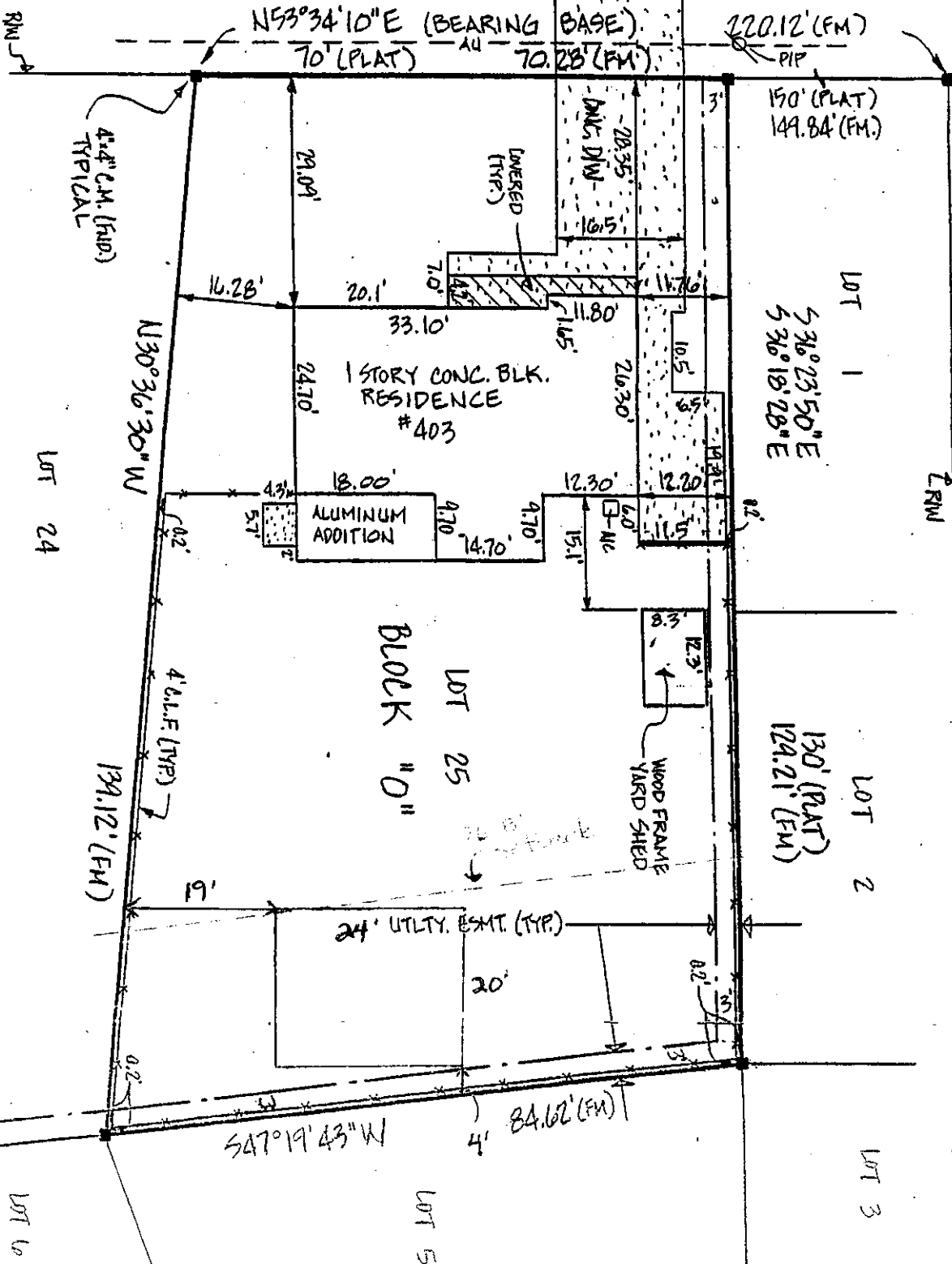
(386) 506-5673
(386) 506-5600

PLANNING COMMISSION DATE:

August 24th, 2006

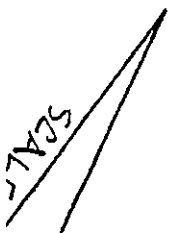
WILLOW AVENUE SOUTH (50' R/W)

STATE ROAD 5-A / NOVA ROAD (100' R/W)



1. STANDARD LET
 2. B.
 3. R/W
 4. DESS. / REQ'D. PLAT
 5. LICENSED SURVEYOR
 6. PLAT - OF - AREA
 7. RECORD DISTANCE
 8. COMC.

1. S.
 2. F.M. OF FIELD
 3. CALC.
 4. ESENT.
 5. LICENSED SURVEYOR
 6. ACTUAL MEASUREMENT
 7. CALCULATED DISTANCE
 8. EASEMENT



- GENERAL
1. Bear
 2. THP
 3. THP
 4. THP
- Other
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 floo

BOHNER
 Map Co
 Florida

CDRIPPE

June 21, 2006

RE: Variance Request for Parcel 6340-03-15-0250
403 S. Willow Avenue
Harbor Oaks, Florida

Dear Sir or Madam:

I am applying for a variance on the above referenced parcel that I purchased while it was still within the city limits of Harbor Oaks.

Since buying the property, I have improved it by adding a small garden shed and a larger one for my pool table. While the structure is well-built and up-to-code, I did not apply for a building permit. Although most of my neighbors were doing the same thing, I should have been more careful because I built it too close to my property line.

My neighbors, whose lot line my shed is encroaching, do not have a problem with my structure that has been there for six years.

For that reason, I am asking that you allow me this variance so that I can leave my shed where it has been for the past six years.

Thank you in advance for your consideration of this matter.

Sincerely,

Stanley Van Horn

enc.

To whom it may concern.

I Stanley VanHorn live at 403 S. Willow Ave. Port Orange, Fl 32127

I built a shed in my backyard years ago. I found out recently that the shed was too close to the back property line. I was in violation of not pulling a permit to build the shed in my yard. Port Orange building and zoning states that I have to go in front of the zoning board and get a variance for my shed to stay in the same location that it is in now. I took it upon myself to talk with each of my neighbors that the shed directly affects. I asked them if they had any objections to my shed staying in the same location that it's in now.

Stanley VanHorn
6-19-06

Neighbor #1 Back property

Name... *Joyce J. Shepherd*
Address... *410 Plumosa Ave.*

Phone number... *386-767-3554*

Comments.... *The shed is fine where it is to me.*

Neighbor #2 Southside of shed

Name... *Renett M. Brooks*
Address... *405 S. Willow Port Orange.*

Phone number... *386-547-2272*

Comments...

I do not object for the shed to stay in the same place as it is now.

