



REVISED

## STAFF REPORT

### LAND DEVELOPMENT DIVISION

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#### Prepared by

Althea Jefferson, AICP, Assistant Director

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#### CASE NUMBER

V24-00003

#### PLANNING & ZONING BOARD HEARING DATE

~~June 5, 2024~~ >> July 16, 2024 <<

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#### PROPERTY OWNER & APPLICANT

Odyssey Preparatory Academy –  
Grapefruit League Land Group LLC (Jake  
Wise, Rep.)

#### PROPERTY LOCATION/ADDRESS

Located at the southwest corner of Emerson Drive NW  
and Glencove Avenue NW. Parcel I.D. 28-36-22-KO-I;  
Tax Account 2804057

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#### SUMMARY OF REQUEST

A **Variance** request to allow a parking setback reduction to 15.5 feet, where the minimum allowed setback is 25 feet, as established by Section 185.042(F)(7)(d) of the Palm Bay Code of Ordinances.

##### Existing Zoning

NC, Neighborhood Commercial

##### Future Land Use

COM, Commercial

##### Site Improvements

Vacant Land

##### Site Acreage

Approximately 9.18 acres

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#### SURROUNDING ZONING & USE OF LAND

##### North

NC, Neighborhood Commercial, Vacant Land

##### East

NC, Neighborhood Commercial (Vacant Land) and RS-2, Single-Family Residential

##### South

RS-2, Single-Family Residential

##### West

IU, Institutional; Church

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**BACKGROUND:**

The subject property is located at the southwest corner of Emerson Drive NW and Glencove Avenue NW and consists of approximately 9.18 acres in the NC, Neighborhood Commercial Zoning District.

The applicant currently has an application for site plan approval under administrative review to develop a public charter school for students attending kindergarten through eighth (8<sup>th</sup>) grade. The proposed school features a two-story structure containing 65,310 square feet, a soccer field, basketball courts, two small playgrounds, parking areas with drive isles for student drop-off and pick-up.

The subject application is for a variance to the rear parking area setback requirement in Sec. 185.042(F)(7)(d) of the City of Palm Bay Code of Ordinances. The required rear parking area setback is twenty-five (25) feet, and the applicant is proposing 15.5 feet. The applicant's proposal is equivalent to a 9.5 foot reduction of the required minimum, or 38% relief.

**ANALYSIS:**

Variances from the terms of the Land Development Code may be granted when special conditions exist that would result in unnecessary hardship if the provisions of the Land Development Code were enforced. However, a variance may not be granted when the public health and safety would be compromised because of the variance. A variance request must demonstrate that all criteria in Section 169.009(B)(1) - (7) of the Code of Ordinances have been met, as follows:

**Item 1** - *"Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, buildings or structures in the same land use category, zoning district, or situation."*

**Applicant Response:** "Special conditions and circumstances exist which are peculiar to the land and which are not applicable to other lands. The property is unique in its size being 9.17 acres, the school is an allowable use in the zoning, and both the rear building and parking setbacks are 25 feet. That is unique, normally there are no parking setbacks in Palm Bay zoning districts that are commercial and/or allow schools. The variance request is the minimum required in order to provide a NFSA standard play field with the proposed school campus layout. The driveway only bumps out into the 25 setback less than 10 feet and only to provide adequate stacking for buses and parents and only the minimum length of the width of the play field."

>>"The property is unique in its size for a school campus being 9.17 acres, the school is an allowable use in the zoning, and both the rear building and parking setbacks are 25 feet. That is unique, normally there are no parking setbacks in Palm Bay zoning districts that are

commercial and/or allow schools. The variance request is the minimum required in order to provide a NFHS standard play field with the proposed school campus layout. NFHS minimum dimensions are 180 feet by 300 feet plus an additional 10 feet buffer on all sides. Those are the minimum dimensions provided on the site plan.

The driveway only bumps out into the 25-foot setback less than 10 feet and only to provide adequate stacking for buses and parents on-site instead of out into a public right-of-way which could create an unsafe condition with both pedestrian and vehicular traffic. The only bump-out into the setback proposed is only along the shortest width of the minimum allowed NFHS standard size field. There are only four single family lots that back up to this area. We met with one of the homeowners and she had no objection to our request for the driveway setback variance as proposed. Along this bump-out area there is a 6-foot tall opaque fence so the adjacent property owners would not see the driveway setback reduction unless looking over the fence. The area has tree preservation proposed as well as new landscaping to aid in the buffering."<<

**Staff Review:** Special conditions and circumstances ~~do not~~ exist, which are peculiar to the use and situation involved.

**Item 2 -** *"The special conditions and circumstances identified in Item 1 above are not the result of the actions of the applicant."*

**Applicant Response:** ~~"The special circumstances are not the results of the actions of the applicant."~~

>>"The applicant is providing the minimum size allowed standard NFHS play field, 2500 linear feet of mixed single and double on-site stacking for the parent loop with the minimal proposed bump-out into the setback, an administrative waiver for reduce City code parking to meet SREF standards, and a height variance to allow for a two-story building versus a single story essentially reducing the building footprint in half. The code and SREF minimum standards for a successful and safe public charter school are not the fault of the applicant and that is what is proposed."<<

**Staff Review:** The special conditions and circumstances are >>not<< created by the applicant.

**Item 3 -** *"Literal interpretation and enforcement of the Land Development Code regulations would deprive the applicant of rights commonly enjoyed by other properties in the same land use category, zoning district or situation under the terms of the Land Development Code and would work unnecessary and undue hardship on the applicant."*

**Applicant Response:** ~~"Literal interpretation and enforcement of the Land Development Code would deprive the applicant of rights enjoyed by other properties, and would result in an~~

unnecessary and undue hardship on the applicant. Most Palm Bay zonings that conditionally or outright allow a school use have significantly reduced green space setback requirements to parking/drives up to as little as 5 feet. In this case we are proposing over 15 feet and providing a 10 foot public utility and drainage easement within it to the south. The applicant has two other campuses in Palm Bay and has been a great community partner for decades including multiple awards from City Council. They are truly providing a need for the underprivileged school children in the community."

>>"Most Palm Bay zonings that conditionally or outright allow a school use have significantly reduced green space setback requirements to parking/drives up to as little as 5 feet. In this case the applicant is proposing over 15 feet and providing a 10-foot public utility and drainage easement within it to the south. They are proposing the minimum parking bump-out necessary for the standard size playfield and needed safe stacking for the parent loop. They are providing a 6-foot tall opaque PVC fence, proposing tree preservation, and additional landscaping in the proposed variance area. The applicant has two other campuses in Palm Bay and has been a great community partner for decades including multiple awards from City Council. They are truly providing a need for the underprivileged school children in the community. Their Eldron Road campus in Bayside Lakes for example does not have these same driveway/parking setback requirements."<<

**Staff Review:** Literal interpretation and enforcement of the Land Development Code regulations ~~would not~~ >>would<< deprive the applicant of rights commonly enjoyed by other properties in the same land use category.

**Item 4 -** *"The variance, if granted, is the minimum variance necessary to make possible the reasonable use of the land, building, or structure."*

**Applicant Response:** ~~"The variance, if granted, is the minimum necessary for the standard size play field and adequate on-site stacking for parents/bus loops."~~

>>"The variance is the minimum necessary to make possible the reasonable use of the land as a public charter school site (an allowable use in the zoning) for the NFHS standard size play field and adequate on-site stacking for parents/bus loops. The driveway bump-out is minimized to only be adjacent to four existing single family lots to the south, has a significant buffer including minimum 6-foot tall opaque fence, tree preservation and additional landscaping."<<

**Staff Review:** The proposed variance is ~~not~~ the minimum necessary to allow the applicant reasonable use of the land.

**Item 5 -** *"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 land use category, zoning district or situation."*

**Applicant Response:** "Granting of the variance will not confer on the applicant any special privilege that is denied by the development code to other lands."

>>"Granting of the variance will not confer any special privilege that is denied by the development code to other lands. For example Odyssey's campus on Eldron Boulevard would not be required to provide the 25-foot paving buffer. Granting of the variance allows the school to have an NFHS standard size playing field and adequate on-site vehicular stacking for the safety of the children and others on campus." <<

**Staff Review:** Granting of the variance will >> not<< confer special privilege to the applicant.

**Item 6 -** *"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."*

**Applicant Response:** "The granting of the variance is in harmony with the general intent and purpose of the code, and will not be injurious to the surrounding properties or detrimental to the public welfare. In fact the granting of the variance is the opposite, it provides a real need for the community and is an allowable use in the zoning."

>>"In fact the granting of the variance is the opposite, it provides a real need for the community, it is an allowable use in the zoning, provides needed on-site parent loop stacking increasing the safety of the public welfare, and is not injurious to the surrounding properties. One homeowner to the south was in support directly adjacent to the area in question, and the combination of fencing, tree preservation, and new landscaping provides a significant buffer." <<

**Staff Review:** Granting this variance will not be in harmony with the general intent and purpose of this code and may >>will not<< be injurious to the surrounding properties or detrimental to the public welfare.

**Item 7 -** *"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 reasonably burdened the applicant's property, based on the recommendations of the special master appointed in accordance with the act, or the order of a court as described in the act."*

**Applicant Response:** "Bert Harris is not applicable."

**Staff Review:** Staff has not received a claim made upon this property, with respect to the "Bert J. Harris Act," or any development order, as indicated above. Therefore, Item 7 is not applicable to this variance request.

**STAFF RECOMMENDATION:**

Staff recommends ~~denial~~ >>approval<< of V24-00003, based on the facts presented, as required under Section 169.009 of the City of Palm Bay Code of Ordinances.

The Planning and Zoning Board must determine, based on the facts presented, to what degree, if any, of minimal relief, is required to meet the needs of the variance being requested, as required under Section 169.009 of the City of Palm Bay Code of Ordinances, and make recommendations to City Council for a final review.













