



MEMORANDUM

To: City Commission
From: Jason Chockley, Community Development Assistant Director
Date: November 9, 2021
Re: Three Hearts ADT Variance

PETITIONS: Three Hearts ADT – Variance # V 6-5-21

LOCATION: 12399 SW 53 Street, Suite 102

OWNER/PETITIONER: SPG Cooper City II TR, Owner
Diane Fernandez, Petitioner
Jeff Katims, Agent

LAND USE
DESIGNATION: Industrial

ZONING DESIGNATION: I-1, Light Industrial

REQUEST: Variance from Section 25-4(g) of the Code to decrease the amount of parking ratio from 1/100sq/ft to 1/450sq/ft or 147 spaces vs. 32 spaces (29 staff, 2 visitor, 1 converted to ADA ramp).

Variance from Section 23-95(2) to increase the maximum allotted percentage of community assembly from 25% to 36% for the center.

BACKGROUND AND PROPERTY DESCRIPTION: The subject site is approximately 8.5 acres in size and is located at 12399 SW 53 Street. Accompanying this petition is a Conditional Use request.

ANALYSIS:

Two variances are requested for approval of the accompanying Conditional Use.

- 1) Decrease the amount of parking required from 1space/100sqft to 1space/450sqft or 147 spaces to 32 spaces (29 staff, 2 visitor, 1 converted to ADA ramp).
- 2) Increase the amount of community assembly for the center from the code allowed maximum of 25% to 36% for the center overall.

The applicants justify the variance requests based on a number of considerations including the following:

1. The proposed use would only require 31 parking spaces as a result of a maximum of 29 staff members and 2 spaces dedicated to visitors. Per the justification/operation plan the pupils do not have the ability to drive themselves and any parents or individuals who transport the pupils are not permitted to park at the facility.
2. The applicant states “The literal interpretation of the parking requirement is completely out of scale with the petitioner’s actual parking needs, thereby denying the petitioner the ability to locate within the property despite the capacity of the parking lot being able to accommodate the petitioner’s actual parking needs”.
3. The proposed training center will have less impacts on the parking area with only 29 staff members compared to a similar office type use. The nature of this use is technically a community assembly use but the impacts commonly associated with community assembly use do not all apply to the way Three Hearts ADT will operate.
4. The applicant states “There are several small businesses located in the same and adjacent buildings that can potentially provide volunteer opportunities for clients... and a number of parks close by that can provide opportunities for community outings and outdoor training opportunities”.

STAFF FINDING: Staff has determined that the application meets all the submittal requirements for review and processing of a variance petition and may be recommended for approval based on the following findings:

1. The variance requested would be the minimum variance necessary for the petitioner to make reasonable use of the property.
2. The granting of this variance will not be detrimental to the public welfare or injurious to property or improvements in the zoning district or surrounding neighborhood due to some of the above statements and committing to a very specific operational plan.

OUTSTANDING STAFF COMMENTS/RECOMMENDATIONS: All comments & concerns have been addressed.

PLANNING AND ZONING BOARD RECOMMENDATION:

At the meeting on October 18, 2021, the Planning and Zoning Board recommended **APPROVAL** of the Conditional Use with a 9/1 Vote with James Curran dissenting.



COMMUNITY DEVELOPMENT DEPARTMENT CITY OF COOPER CITY

9090 SW 50 Place – P.O. Box 290910 - Cooper City, Florida
33329-0910 Phone: (954) 434-4300, ext. 226 – Fax: (954) 680-1439

VARIANCE APPLICATION

ATTENTION: Prior to submission of application, the Petitioner &/or Owner must schedule a pre-submittal meeting with the Community Development Staff to review the proposed project, the submittal and processing requirements. The submittal dates for DRC and P&Z Board can be found on the City's website at: www.coopercityfl.org. ALL ADVERTISING AND RECORDING FEES WILL BE THE RESPONSIBILITY OF THE APPLICANT.

FOR STAFF ONLY:
PETITION # _____
DATE PETITION FILED: _____

Date of Pre-Submittal Meeting: _____

INSTRUCTIONS TO APPLICANT:

1. Please complete all requested information on this application. If not applicable, indicate with N/A.
2. A completed Notarized General Application must accompany this application.
3. Make Checks payable to the City of Cooper City per the current Fee Schedule.

I. PROPERTY INFORMATION

ADDRESS OF PROPERTY AND GENERAL LOCATION INFORMATION:

12399 SW 53rd St. Suite 102 Cooper City Fl. 33330

SIZE AND DIMENSIONS OF PROPERTY:

14,652 sq. ft. (unit)

III. VARIANCE REQUEST(S)

Attach Separate Sheet(s) if More Space is Needed.

CODE SECTION	REQUIREMENT	REQUEST	DEGREE OF DEVIATION
Sec. 25-4 (g)	147 parking spaces	Provide 32 parking spaces	115 fewer parking spaces
Sec. 23-95 (2)	Max. 25% community assembly in the complex	36% community assembly in the complex	Additional 11% of complex

IV. ADJACENT PROPERTIES

Adjacent Property	Land Use Plan Designation	Zoning Designation	Existing Use(s) of Property
NORTH	Industrial	I-1 Industrial	Place of worship, retail and office
SOUTH	Commercial	B-2 Commercial	Commercial, office, retail
EAST	Industrial	I-1 Industrial	Commercial, office, retail
WEST	N/A - Southwest Ranches	N/A - Southwest Ranches	High School

V. VARIANCE CRITERIA

Please address each of the following review criteria in an attached justification statement.

- (a) Special and unique conditions exist which are peculiar to the petitioner's case and which are not generally applicable to other property located in the zoning district.



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- (b) The special and unique conditions are not directly attributable to the actions of the petitioner.
- (c) The literal interpretation of the zoning code, as applied to the petitioner, would deprive the petitioner of rights commonly enjoyed by the owners of other property in the zoning district.
- (d) The variance granted is the minimum variance necessary for the petitioner to make reasonable use of the property.
- (e) Granting the variance is not detrimental to the public welfare, or injurious to property or improvements in the zoning district or neighborhood involved.
- (f) Granting the variance is not contrary to the objectives of the Comprehensive Plan as adopted April 6, 1989 by the Cooper City Commission.

VI. SUBMITTAL CHECKLIST		
QTY	REQUIRED	YES (√)
1	Completed Original General Application	✓
1	Completed Original Variance Application	✓
1	Certificate of Title, property deed or other proof of ownership	✓
14	Surveys and 1 Signed & Sealed Survey	✓
14	Architectural Plans (if applicable – check with staff)	✓
14	Site Plans	✓
14	Aerials Photos of subject site clearly delineating site boundary lines.	✓
14	Subject Site Maps clearly delineating site boundary lines with adjacent and nearby street names labeled.	✓
14	Justification Statements	✓
1	List of names & addresses of property owners in the 300' radius	✓
1	Sets of Mailing Envelopes (with labels already on the envelopes)	✓
1	Radius Map from Property Appraisers Office showing 300' radius on tax map.	✓

VI. STAFF USE ONLY			
Petition #:	Staff Intake By:	Intake Date:	
Sufficiency Completed by:		Sufficiency Date:	

VIII. COOPER CITY CODE

Sec. 23-153. Variance.

- (a) *Purpose and intent.* For purposes of this section, “variance” shall mean a modification of the zoning district regulations when such variance will not be contrary to the public interest and when, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship.
- (b) *Applicability.* A variance is authorized only for height, area, size of structure or size of yards and open spaces, and off-street parking and loading requirements. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance nor shall a variance be granted because of the presence of non-conformities in the zoning district or classification or in adjoining zoning districts or classifications.
 - (1) Use variance. The establishment or expansion of a use otherwise prohibited in the zoning district may be permitted by variance provided that the characteristics of the site (for example, the presence of jurisdictional wetlands, environmentally-sensitive lands) or other pre-existing uses on the site or adjacent thereto would serve to preclude the development of the property within the permitted uses allowed in the applicable zoning district.



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Applicants for use variances shall submit with their application, a statement from a Florida registered engineer explaining the unique circumstances of the site which would preclude alternate development within the permitted uses of the zoning district.

- (c) *Application.* Any person applying for a building permit found to be in non-conformance to the city zoning code may apply for a variance from the existing zoning regulations of the city if found to be in accordance with subsection (b) above, and the procedures for requesting a variance which are set forth as follows:
- (1) Clear architectural plans and site plan shall be submitted, prior to variance application, to the building department, in such detail that all required variances to the city code may be determined by city staff.
 - (2) The building department shall issue to the applicant in writing a letter indicating:
 - a. Administrative denial of application for a building permit;
 - b. That the city has received plans in such detail as to enable determination of all required variances to specific sections of the city code;
 - c. A specific list of variances required in order for the plans to be in complete compliance with the city code.
 - (3) Filing of variance application shall be in duplicate, on forms to be supplied by the city, with the city clerk. The application must be accompanied by the letter required in subsection (2) above, and shall include the following:
 - a. Name of applicant;
 - b. Applicant's relation to the property involved;
 - c. The legal description of the property;
 - d. The variance(s) from existing regulations requested;
 - e. The hardship for requesting the variance(s).
 - f. A copy of the administrative denial from the building department.
 - (4) Each application for a variance shall be accompanied by a fee (refer to fee schedule), payable to the city. Said fee shall be nonrefundable, provided, however, the city commission shall have the authority to direct the refunding of said fee in their sole and exclusive discretion.
- (ci) *Scheduling of public hearings.* Upon receipt of the application the city clerk shall docket same for a public hearing to be held for review and recommendation by the planning and zoning board at the next regular meeting of the planning and zoning board, which shall be at least twenty-five (25) days subsequent to the date of the filing of the application. The city clerk shall docket same for a public hearing to be held by the city commission at the next regular or special meeting of the city commission, which shall be at least twenty-five (25) days subsequent to the date of the filing of the recommendation by the planning and zoning board.
- (cii) *Notification.*
- (1) Notice of each meeting shall be published by the city clerk in a newspaper of general circulation in the city, which notice shall be published once, with the dates of the respective meetings.
 - (2) The city clerk shall send notice of the aforesaid planning and zoning board meeting and city commission public hearing by first class United States mail to each owner of real property located within three hundred (300) feet of the property on which the variance is requested. Notice of said meetings shall also be sent, via certified mail, to the petitioner.
 - (3) Notice of each public hearing shall be posted in a conspicuous place in the city hall at least fifteen (15) days prior to the date of the hearing.



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- (f) *Planning and zoning board action.* The planning and zoning board shall consider the application for the variance at the meeting docketed by the city clerk, and may recommend approval of the variance as requested, recommend approval as amended, recommend disapproval or table the variance.
- (g) *City commission action.* The city commission shall consider the application for the variance at the hearing docketed by the city clerk, and the approval of the variance as requested or as amended by the commission shall only be on the affirmative vote of at least three (3) members of the commission.
- (h) *Expiration of approval.* Any variance authorized by the city commission shall expire ninety (90) days after the date of action on the variance by the city commission unless building permit, based upon and incorporating the variance, is issued within the aforementioned ninety (90) day period.
- (i) *Reapplication.* Upon rejection by the city commission of any application for a change, exception, and/or variance in existing zoning ordinances and regulations as same affects a specific lot, piece or parcel of land in the city, a period of not less than twelve (12) months shall elapse before the city commission will accept other, further, or new applications for the same change, exception, and/or variance, regardless of the identity of the petitioner.

(Ord. 95-4-2, § 1, 4-11-95)

Sec. 23-154. Additional fees for rezonings and variances.

In addition to all other fees required in connection with an application for a zoning change or an application for a granting of a variance, the applicant shall pay unto the city the actual cost incurred by the city in the completion of the ownership search of adjacent property owners who are required to receive notification of the application, the cost of publication of the notice and the cost of mailing and duplicating the notice. The city shall upon a determination of the exact cost as aforesaid forthwith notify the applicant of the costs incurred or to be incurred as hereinabove set forth and may defer any further action upon the application for rezoning or for a variance until the aforesaid costs have been paid in full, which costs shall be determined to be a part of the application fee, and in addition to any amount otherwise required. The city may, as a condition precedent to taking any action on the application, require the posting of a deposit in an amount estimated by the city to be the costs to be incurred as aforesaid. All funds received hereunder shall be receipted and deposited in the same manner as the application fee heretofore required on the applications for rezoning and/or granting of variances.

(Ord. No. 03-1-4, § 1, 1-28-03)

Rev. Suppl. No 5 (July, 2003)

**THREE HEARTS
12399 SW 53RD STREET**

Variance Request No. 1:

From: Sec. 25-4(g), Amount of off-street parking, which requires Three Hearts to provide 147 parking spaces as a 14,656 square feet Community Assembly Use at a ratio of 1 space per 100 square feet of gross floor area without fixed seats.

To: Provide 32 parking spaces, which is a deviation of 115 parking spaces

Justification: Three Hearts is not the type of Community Assembly Use for which the parking standard in Sec. 25-4 (g) is intended. Community Assembly Uses, by definition, are facilities with open areas where people (i.e., congregants, spectators, attendees, etc.) assemble for a common purpose. The difference between three hearts and other Community Assembly Uses is that three hearts functions more like a preschool or elementary school where the pupils are transported to the facility by another individual without the need to park. In fact, parents or other individuals who transport the pupils are not permitted to park at the facility. Only the employees and the occasional scheduled visitor (by appointment) park at the facility.

Three hearts will have a maximum 29 staff members including executives, and a maximum need for 2 visitor spaces, for a total *maximum* parking need of 31 parking spaces. One additional space would be striped-off and reserved for pupil pickup and drop-off, resulting in a total *maximum* need for 32 parking spaces. These numbers are based upon years of existing operation at another, larger, location. While the requested variance of 115 parking spaces seems extensive, it is simply the result of an ill-fitting parking standard for this particular use because the code classifies this use as community assembly when it actuality functions more like an elementary school. The parking requirement for an elementary school is 1 space per classroom plus 75% of parking required for rooms devoted to public assembly. Under this standard, three hearts would be required to provide 26 parking spaces, based upon 15 classrooms and approximately 1,500 square feet of open assembly area.

The two buildings that share the parking facility (12349 and 12399 SW 53rd Street) have a combined 189 parking spaces of which 125 are required for uses that operate during regular business hours

12349 SW 53rd Street			Square feet			Parking Requirement		
Building	200		Total	Office	Warehouse	Assembly	Code	Actual*
Suite	206	Radio Studio	2220	2220			7	7
Suite	205	SIG Systems	6660	2000	4660		18	18
Suite	204	New Wine Ministries	4440	2220		2220	30	7
Suite	203	New Wine Ministries	4440			4440	44	0
Suite	202	Med-Lab Supply	4440	1332	3108		12	12
Suite	201	City Electric Supply	4440	2220	2220		13	13
Suite	105	Florida Solar & Air	7000	5714	1286		22	22
Suite	104	Premiere Lending	2665	2665			9	9
Suite	103	Vacant	7000	3500	3500		20	20
Suite	102	Three Hearts	14656			14,656	147	32
Suite	101	United Realty	4800	4800			16	16
*Assembly in #203 & 204 operates evening & weekends; #102 needs 32 spaces per variance anal							339.0	157
Total number of parking spaces								189
Number of surplus parking spaces								32

(two community assembly uses don't operate during normal business hours). If Three Hearts utilized its entire 32 allotted spaces, 157 parking spaces would potentially be occupied and 32 unused spaces would remain, as shown in the table below. These figures are derived from a current tenant list and recent parking study that SEPI conducted to determine how the parking facilities utilized. Therefore, the combined parking facility is sufficient to accommodate Three Hearts.

Variance Analysis:

- (a) *Special and unique conditions exist which are peculiar to the petitioner's case and which are not generally applicable to other property located in the zoning district.*

The land development regulations classify Three Hearts as a community assembly use, which is a class of uses required to provide one parking space per 100 square feet of gross floor area without fixed seating. This parking requirement is designed for assembly halls, gymnasiums and other facilities typified by a large open rooms devoted to assembly of persons who arrive in automobiles that are parked at the facility.

Three Hearts is unique in that it does not function as such an assembly use. The facility is occupied by employees and clients. Clients are individuals with cognitive deficiencies who cannot and do not drive but are dropped-off at the facility without any parking being involved by other than the employees. The facility is comprised of small, office-sized classrooms and an open area where instruction is provided in small groups. The employees are instructors and some administrative personnel. The maximum number of employees is fixed based upon the maximum capacity of the facility (145 clients) and the required ratio of instructors to clients, resulting in a maximum 29 total employees. Three hearts knows that two additional spaces will accommodate the maximum number of visitors to the facility, based from experience operating its previous, larger facility.

- (b) *The special and unique conditions are not directly attributable to the actions of the petitioner. The special and unique conditions are not attributable to the actions of the petitioner. The petitioner is not creating a condition where the impact will exceed the code requirement (in this case, the number of parking spaces). Conversely, the code requirement for the number of parking spaces greatly exceeds the actual parking requirement for operation of the proposed facility at full capacity.*
- (c) *The literal interpretation of the zoning code, as applied to the petitioner, would deprive the petitioner of rights commonly enjoyed by the owners of other property in the zoning district.*

The literal interpretation of the zoning code, as applied to the petitioner, would deprive the petitioner of rights commonly enjoyed by the owners of other property in the I-1 District and their tenants because the literal interpretation of the parking requirement is completely out of scale with the petitioner's actual parking needs, thereby denying the petitioner the ability to locate within the property despite the capacity of the parking facility to accommodate the petitioner's actual parking needs.

- (d) *The variance granted is the minimum variance necessary for the petitioner to make reasonable use of the property.*

The requested variance is the minimum variance that will allow Three Hearts to occupy the premises for which the variance is requested. The requested variance also enables the property owner to lease the premises while having the smallest possible impact on the existing parking facility, as other uses for which the premises are suitable have higher actual parking requirements than Three Hearts. For example, the premises are most suitable for office use, which would require 49 parking spaces compared to Three Heart's 32 spaces.

- (e) *Granting the variance is not detrimental to the public welfare, or injurious to property or improvements in the zoning district or neighborhood involved.*

Granting the variance will be in harmony with the public welfare and will be beneficial to improvements in the business park and I-1 District

- (f) *Granting the variance is not contrary to the objectives of the comprehensive plan as adopted April 6, 1989 by the Cooper city commission.*

Granting the variance is not contrary to any of the objectives of the adopted comprehensive plan.

Variance Request No. 2:

From: Sec. 32-95(2), Community assembly, church or place of worship, which limits the gross floor area of community assembly use in the I-1 District to 25% of the total gross floor area of the complex or center. Currently, 2 community assembly uses occupy 26,238 sf, or 22.7% of the north complex.

To: Allow 36% community assembly use within the north complex of the Cooper City Commerce Center, for a total of 40,890 square feet.

Justification: The Cooper City Commerce Center, north complex is an ideal location for Three Hearts. First, the second floor space is difficult for Seagis Corp. to lease based upon the limited parking available for parking-intensive uses that are most likely to occupy the second floor. For example, Three Hearts requires far fewer parking spaces than if an office use occupied the space. Second, Three Hearts is ideally located in a business park since its mission is to train individuals with development disabilities to integrate into the workplace and lead productive lives. There are several small businesses located in the same and adjacent buildings that can potentially provide volunteer opportunities for clients. These include a dance school, music school and swim school located within the complex, all of which can potentially provide enrichment opportunities for pupils/clients whose parents work past our closing time. There are also a number of parks close by that provide opportunities for community outings and outdoor training opportunities.

The second floor space that Three Hearts proposes to occupy in no way limits or affects the functioning of the building's ground floor's office/warehouse and other commerce businesses that require ground floor locations with high ceilings and rollup doors for warehouse use.

Variance analysis:

(a) *Special and unique conditions exist which are peculiar to the petitioner's case and which are not generally applicable to other property located in the zoning district.*

The land development regulations limit the percentage of gross floor area that can be occupied for community assembly use within a shopping center or business park to protect the overall functioning of commercial centers for commerce use. The petitioner seeks a variance from the maximum percentage of community assembly use in order to occupy a portion of the building's second floor ("premises"). The second floor has historically been leased separately from ground floor space in the building. Ground floor spaces has been devoted to a variety of commerce uses consistent with the normal function of a business park, typically involving a combination of office and warehouse. In fact, the second floor—which consists of only two tenant spaces—is the only second floor space in the I-1 District. The second floor space, then, is not essential to the basic functioning of the building as part of a business park high cubic volume spaces and rollup doors for warehouse-type uses.

(b) *The special and unique conditions are not directly attributable to the actions of the petitioner.*

The special and unique conditions are not attributable to the actions of the petitioner. The second floor is an anomaly within the I-1 zoning district and a relative anomaly within commercial shopping centers.

(c) *The literal interpretation of the zoning code, as applied to the petitioner, would deprive the petitioner of rights commonly enjoyed by the owners of other property in the zoning district.*

The literal interpretation of the zoning code, as applied to the petitioner, would deprive the petitioner of rights commonly enjoyed by the owners of other property in the I-1 District, as the second floor is an anomalous condition that is not considered in the Sec. 23-95(b)(2) community assembly limitation.

- (d) *The variance granted is the minimum variance necessary for the petitioner to make reasonable use of the property.*

The requested variance is the minimum variance that will allow the petitioner to occupy the premises, and for the property owner to lease the premises. Other uses for which the premises are suitable would require substantially more off-street parking spaces in practice than the petitioner requires, thereby impacting the functioning of the property in a manner that the petitioner will not.

- (e) *Granting the variance is not detrimental to the public welfare, or injurious to property or improvements in the zoning district or neighborhood involved.*

Granting the variance will be in harmony with the public welfare and will be beneficial to improvements in the business park and I-1 District because of the reduced need for off-street parking spaces and synergy with other businesses within the I-1 District.

- (f) *Granting the variance is not contrary to the objectives of the comprehensive plan as adopted April 6, 1989 by the Cooper city commission.*

Granting the variance is not contrary to any comprehensive plan objective.