

Place: Jackie Dole Sherrill Community Center (Dining Room)

Time: 3:30 PM

Board of Adjustment

AGENDA

12/1/2021

I. Business Meeting

1. Review and approval of December meeting's agenda
2. Review and approval of the minutes of the October meeting
3. Planning Report
4. Chair's Report
5. Introductions

II. Public Hearing

1. Presentation of Petitions for Public Hearing

A. A petition has been filed by Greg Hodges, Representative, John C. Anglin, Engineer, and Merchants & Marine Bank, Owner, as required in the Land Development Code, Ord. No. 3209, to request a variance from section 6, Table 6.1 "Minimum Front Setback" for B-5, "30 feet", and instead allow a setback of 10 feet for a variance of 20 feet along Coca-Cola Ave for a proposed building to be located at 4607 Hardy St (Parcel 051Q-12-001.000, PPIN 21451, Lamar Co., Ward 3).

B. A petition has been filed by Justin Woodward, Representative, and Roddy Rumbley, Owner, as required in the Land Development Code, Ord. No. 3209, to request a variance from section 10, Table 10.6 "Minimum Front Sign Setback" for a pole sign in B-5, "10 ft" and instead allow a sign setback of 0 feet for a variance of 10 feet along US HWY 98 W for a proposed sign to be located at 6439 US HWY 98 W (Parcel 052N-09-032.001, PPIN 35094, Lamar Co., Ward 3).

C. A petition has been filed by Forrest Dungan, Engineer, and Lynn Crosby Gammil, Owner, and SDP MS Hattiesburg 1, LLC, Applicant, as required in the Land Development Code, Ord. No. 3209, to request a variance from section 5.4.36.4, which states: no part of the active use area of a drive through restaurant, including the drive through, menu, and window, may be located closer than three hundred (300) feet to a lot containing a legal, conforming residential use, and instead allow for a distance of one hundred and twenty two point seven (122.7) feet of the active area of a drive through for a restaurant to a lot containing a legal, conforming residential use for a proposed development for undeveloped lots in the 3100 block of Hardy St (Parcel No. 2-028N-07-095.00, 2-028N-07-094.00, 2-028N-07-096.01; PPINs 26490, 26488, 44474).

III. Other Business

IV. Adjournment

**MINUTES OF THE
REGULAR MEETING OF THE
HATTIESBURG BOARD OF ADJUSTMENT
October 6, 2021**

The Hattiesburg Board of Adjustment did meet in regular session on October 6, 2021 at 3:30 PM at the Jackie Dole Community Center, 220 West Front Street, Hattiesburg, Mississippi. Shawn Harris, Chair, presided over the meeting. A quorum was indicated and the attendance was as follows:

Board Members Present: Victoria Bolls (GoToMeeting)
Bruce Betts, Vice-Chair
Dick Conville
Shawn Harris, Chair
Lucy Parkman
James Trussell (via GoToMeeting)
Brandon Williams (via GoToMeeting)

Board Members Absent: Bernard Green
James Hughes
Stacy Ready

Also Present: Andrew Ellard, Director
Jim Gladden, Esq.
Caroline Miles, Planner
Nathan Satcher, Planning

Shawn Harris, Chair, declared the meeting of the Hattiesburg Board of Adjustment open and in session at 3:34 PM.

AGENDA REVIEW

There came the matter of the October 2021 Agenda. A motion was made to approve the October 2021 Agenda by Dick Conville and seconded by Brandon Williams.

Board Members voting aye: Victoria Bolls (GoToMeeting)
Bruce Betts, Vice-Chair
Dick Conville
Shawn Harris, Chair
Lucy Parkman
James Trussell (via GoToMeeting)
Brandon Williams (via GoToMeeting)

Board Members voting nay: None

MINUTES REVIEW

There came the matter of the September 1, 2021 and September 8, 2021 minutes. Shawn Harris requested a motion to approve the minutes. A motion was made to approve the both sets of minutes by Lucy Parkman and seconded Bruce Betts.

Board Members voting aye: Victoria Bolls (GoToMeeting)
Bruce Betts, Vice-Chair
Dick Conville
Shawn Harris, Chair
Lucy Parkman
James Trussell (via GoToMeeting)
Brandon Williams (via GoToMeeting)

Board Members voting nay: None

REPORTS

PLANNING REPORT

Caroline Miles, Planner, provided the Planning Report. On September 21, 2021 City Council approved the zoning buffer and storage yard area variance at 6751Hwy 49 (BOA recommendations upheld). Andrew Ellard, Director, gave an update on the launch of the East Hardy/Hall Avenue Overlay District planning project.

CHAIR’S REPORT

No report given.

INTRODUCTIONS

Board members introduced themselves.

PUBLIC HEARING – BOARD OF ADJUSTMENT

Shawn Harris, Chair, declared the Public Hearing for the Board of Adjustment open at 3:40 PM.

There came the matter of Item A (Maximum Front Setback Variance), Brad Lauth, Agent, and Wilmer Joseph Morris III & Bettye P. Morris, Owner, and Martha Jo Howell Land Company, LLC, Owner, as required in the Land Development Code, Ord. No. 3209, to request a variance from Section 6, Table 6.1 “Maximum Front Setback” for B-5, “150 feet”, and instead allow a setback of two hundred sixty feet (260) feet for a variance of one hundred ten (110) feet along US Highway 98 for a proposed building to be located at 6365 US Highway 98 (Parcels 052P-09-007.000, portion of 052P-09- 017.000; PPIN 19379, portion of PPIN 12140, Ward 3).

	<u>Name</u>	<u>Address</u>	<u>City/State</u>
<u>Presented by:</u>	Seth Hunter	PO Box 2055	Hattiesburg, MS
<u>Proponents:</u>	Brad Lauth	1626 Cole Blvd.	Lakewood, CO
	Steve Hudak	12800 Tuchahoe Creek Pkwy	Richwood, ?
<u>Opponents:</u>	None		

Seth Hunter presented the application. He stated the existing setbacks for the other car lots in the vicinity, best and highest use of the land as a car lot, and grade changes from the front to the rear of the property were key reasons why the variance should be granted. Brad Lauth and Steve Hudak explained the Carmax building model and how Carmax site models in general function.

Shawn Harris declared the Public Hearing closed and the Business Meeting open to vote on Item A. Victoria Bolles stated that she was perplexed as to why Carmax would enter into the contract to secure a property they said does not meet their general size standards and knowing they would need a variance to meet their general design. Dick Conville stated he feels that the City is being provided a “cookie cutter” corporate design that has had little thought as to whether the local codes can be met. Shawn Harris stated that this site is in West Hattiesburg: there is no culture or sense of place out there, it is not walkable (even though he noted the site plan shows a sidewalk addition), and he does not think that this variance would bestow any privilege beyond what other automobile dealers have in that corridor so he is untroubled by the setback variance. He stated the variance would be more problematic to him in other zoning districts/areas of the City where there is pedestrian infrastructure. Dick Conville stated that approval of the variance would result in the institutionalization of grandfathering in the previous LDC and delegitimize the current LDC. James Trussell stated he, too, was concerned with the precedent the Board would be setting with

an approval. Shawn Harris stated he was not concerned about precedent because he reviews each individual request on its own. Shawn Harris made a motion to approve the petition on the following bases: Special Privilege: A variance shall not confer any special privilege that is denied to other lands or structures in the same zoning district; Literal Interpretation, The literal interpretation of the provisions of the regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district and would cause unnecessary and undue hardship on the applicant, Conformance with the Purposes of this Code, the granting of this variance will not conflict with the purposes and intent expressed or implied in the Land Development Code. Brandon Williams seconded the motion.

Board Members voting aye: Victoria Bolls (GoToMeeting)
Bruce Betts, Vice-Chair
Shawn Harris, Chair
Lucy Parkman
Brandon Williams (via GoToMeeting)
Board Members voting nay: Dick Conville
James Trussell (via GoToMeeting)

BUSINESS MEETING

There being no further business, Dick Conville made a motion to adjourn the meeting. The motion was seconded by Bruce Betts. The meeting was adjourned at 4:25 PM.

Shawn Harris, Chair

Caroline Miles, Planner

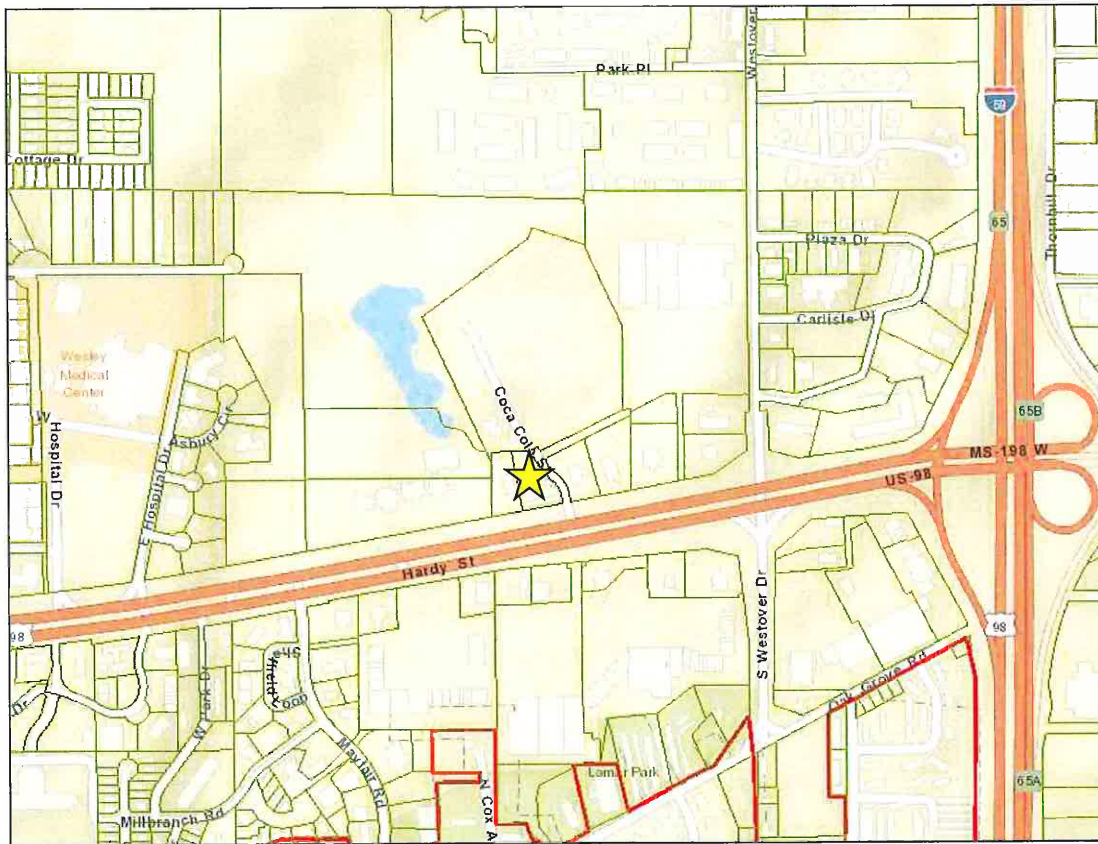
SUBJECT PARCEL:
4607 Hardy St .

Greg Hodges, Representative, John C. Anglin, Engineer,
and Merchants & Marine Bank, Owner

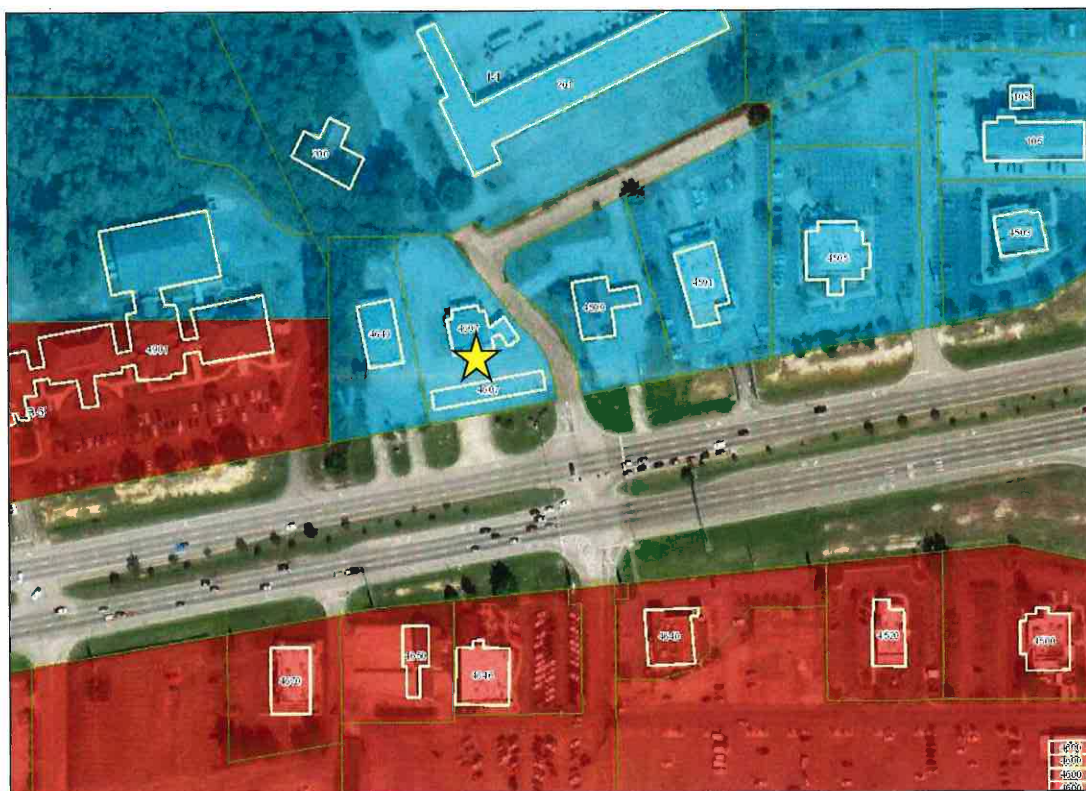
Request a variance from section 6, Table 6.1 "Minimum
Front Setback" for B-5, "30 feet", and instead allow a
setback of 10 feet for a variance of 20 feet along Coca-Cola
Ave for a proposed building to be located at 4607 Hardy St
(Parcel 051Q-12-001.000, PPIN 21451, Lamar Co., Ward 3).



Vicinity Map—Ward 3



Zoning— I-1

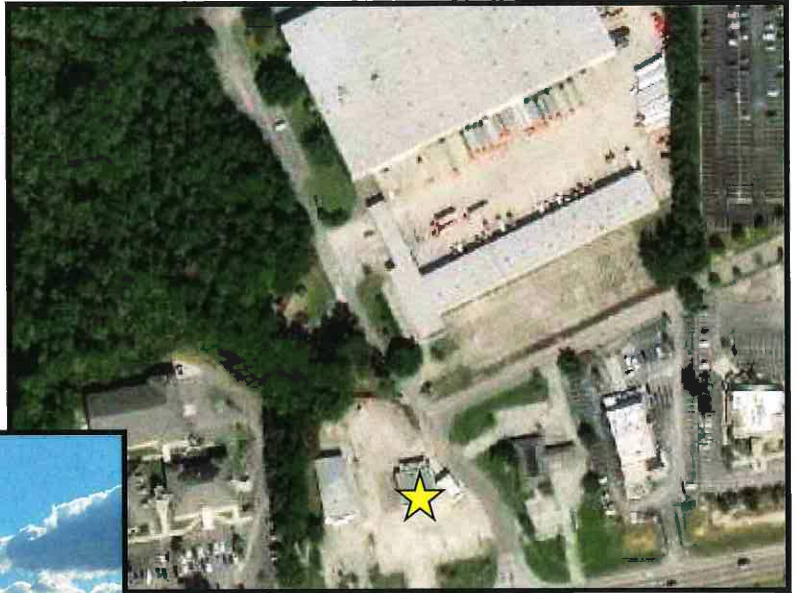


Site Aerial



SURROUNDING AREA

Northern Direction: I-1 Industrial



Southern Direction: B-5 Commercial



Eastern Direction: I-1 Commercial



Western Direction: I-1 Commercial



Item: A
Greg Hodges, Representative, John C. Anglin, Engineer,
and Merchants & Marine Bank, Owner
Request for: **Front Setback Variance**



**Board of Adjustment
Case Fact Sheet**

Name of Petitioners: Greg Hodges, Representative, John C. Anglin, Engineer, and Merchants & Marine Bank, Owner

Address of Property: 4607 Hardy Street **Tax Parcel:** 051Q-12-001.000 **PPIN:** 21451 **Ward:** 3

Request: **Front Setback Variance (Corner)**

Purpose of Request: To consider variance from section 6, Table 6.1 "Minimum Front Setback" for B-5, "30 feet", and instead allow a setback of 10 feet for a variance of 20 feet along Coca-Cola Ave for a proposed building to be located at 4607 Hardy St (Parcel 051Q-12-001.000, PPIN 21451, Lamar Co., Ward 3). (contingent on zoning change to B-5)

Applicant Summary: See Attached

Applicable Regulations:

SECTION 6

Table 6.1 Dimensional Standards										
District	Minimum Lot Size in SF/ Width at Setback	Max. Dwelling Units	Max. Floor Area Ratio	Setbacks in feet				Max. Height*	Max. Impervious Surface Lot Coverage	Buffer in Feet
				Min. Front	Max. Front	Min. Side	Min. Rear			
B-5	No minimum/ 100	-	1.50	30	150	0 or 10	0	72 feet or 6 stories	90%	50

Item: A

Greg Hodges, Representative, John C. Anglin, Engineer,
and Merchants & Marine Bank, Owner
Request for: **Front Setback Variance**

6.2.2 Corner lots shall have two front setbacks and two side setbacks. The Planning Director may waive this requirement and determine the front yard to be on the street front that is in line with the prevailing pattern of front yards on the street in order to be consistent with the established pattern of the street.

Present Zoning:	This parcel is currently zoned I-1 Light Industrial District
Present Use:	Commercial
Future Land Use:	Regional Business Corridor District
Surrounding Zoning and Land Use:	North: I-1 Light Industrial District / Light Industrial South: B-5 Regional Business District/ Commercial East: I-1 Light Industrial District / Bank West: B-5 Regional Business District & I-1 Light Industrial District / Church
Letters or Concerns stated:	The Planning Division Office has not received any letters or other written communications relative to this case as of November 23, 2021.
History / Background:	The applicant met with staff in Pre-Application to discuss redevelopment as a financial institution with drive through services. This request is contingent on the approval of a zoning change from I-1 to B-5. See site plan for site design layout. Applicant provided a letter of support. Corner lots have two front setbacks. See Applicable Regulations above.

Basis for Approval (12.4.1.1):

I. Hardship.

- The hardship is unique to the property and is not or will not be caused by the actions or inactions of the applicant.
- There are exceptional conditions creating an undue hardship applicable only to the property involved or the intended use which do not apply generally to the other land areas or uses within the same zoning district.

II. Special Privilege. A variance shall not confer any special privilege that is denied to other lands or structures in the same zoning district.

III. Literal Interpretation. The literal interpretation of the provisions of the regulations would deprive the applicant of rights commonly enjoyed by other properties in the same

Item: A
Greg Hodges, Representative, John C. Anglin, Engineer,
and Merchants & Marine Bank, Owner
Request for: **Front Setback Variance**

zoning district and would cause unnecessary and undue hardship on the applicant.

IV. Reasonable Use. The applicant cannot make reasonable use of the property without the requested variance.

V. Minimum Required. The granting of a variance is the minimum variance that will make possible the reasonable use of the land or structure.

VI. Conformance with the Purposes of this Code. The granting of a variance will not conflict with the purposes and intent expressed or implied in the Land Development Code.

Variance Information

The Board of Adjustment has the responsibility to hear and make recommendation on requests for variances to the requirements of this Code (per Section 11.4.). Section 12.4.1 Variances are departures from the standards of the Land Development Code, except land use, which will not be contrary to the public interest and where, owing to conditions peculiar to the property and not as a result of the action of the applicant, a literal enforcement of this Code would result in unnecessary and undue hardship.

The following conditions must be met before a variance can be recommended. Not all criteria must be met. However, a strong application will meet multiple criteria.

Approval Criteria.

A variance is not a right, but a privilege that property owners meeting the following criteria may request. These criteria are to be used to consider all variance requests. It shall be the burden of the applicant to prove that the request meets these criteria. Use this worksheet or format your own to demonstrate the following criteria.

1. **Hardship.** (a) The hardship is unique to the property and is not or will not be caused by the actions or inactions of the applicant. (b) There are exceptional conditions creating an undue hardship applicable only to the property involved or the intended use which do not apply generally to the other land areas or uses within the same zoning district.

Due to Odd Shape of Subject property, a hardship is created with the current setback and development of lot is impractical.

2. **Special Privilege.** A variance shall not confer any special privilege that is denied to other lands or structures in the same zoning district.

No special privilege is being requested due to the unique and odd shape of subject property. No other properties have the same dimensions & characteristics.

3. **Literal Interpretation.** The literal interpretation of the provisions of the regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district and would cause unnecessary and undue hardship on the applicant.

Variance Information

4. **Reasonable Use.** The applicant cannot make reasonable use of the property without the requested variance.

Due to the odd and peculiar shape of subject property, the property cannot be reasonably developed with the current setback requirements

5. **Minimum Required.** The granting of a variance is the minimum variance that will make possible the reasonable use of the land or structure.

6. **Conformance with the Purpose of this Code.** The granting of a variance will not conflict with the purposes and intent expressed or implied in the Land Development Code.

There is no conflict with the purpose and intent of the current LDC with the granting of variance.

12.4.1.2 Conditions of Approval. In recommending the granting of a variance, the Board of Adjustment may require appropriate conditions and safeguards in conformity with this Code. Violation of such conditions and safeguards, when made a part of the terms under which a variance is granted, shall be deemed a violation of this Code. The recommendation of the Board of Adjustment shall be presented to the City Council for final action.

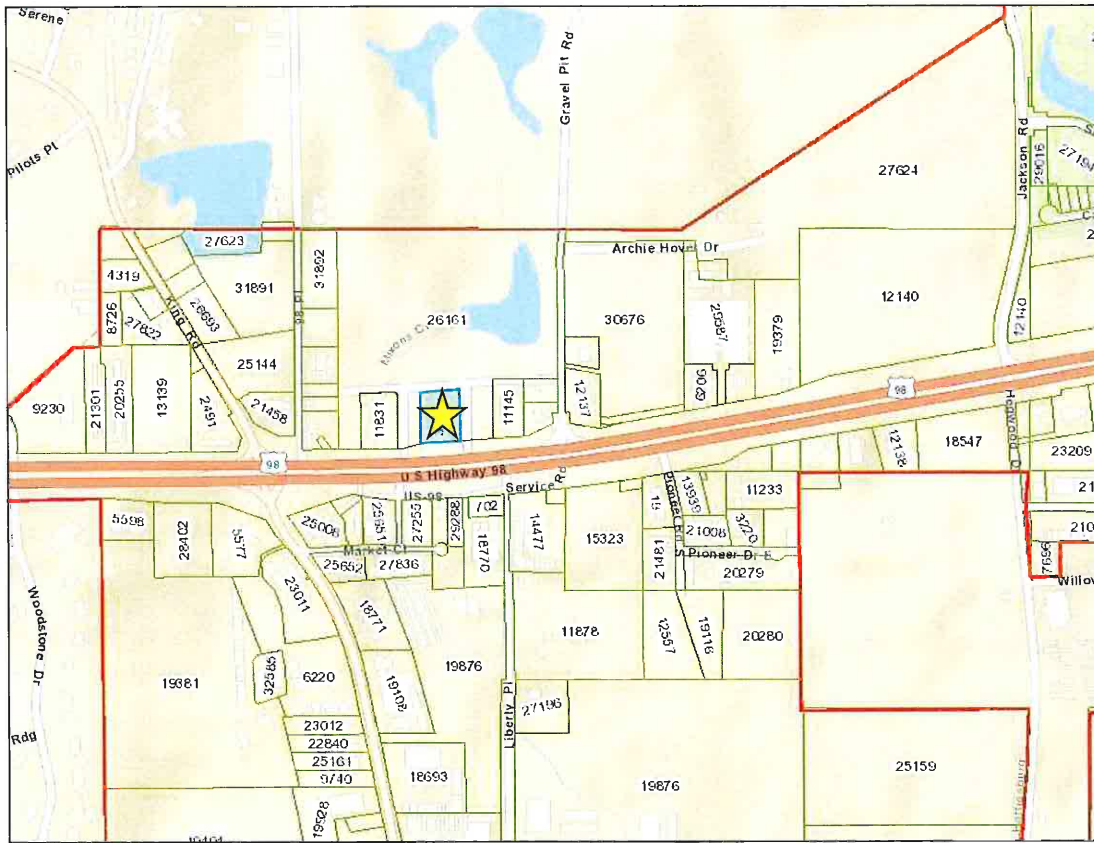
SUBJECT PARCEL:
6439 US HWY 98 W

Justin Woodward, Representative, and Roddy Rumbley, Owner

Request a variance from section 10, Table 10.6 “Minimum Front Sign Setback” for a pole sign in B-5, “10 ft” and instead allow a sign setback of 0 feet for a variance of 10 feet along US HWY 98 W for a proposed sign to be located at 6439 US HWY 98 W (Parcel 052N-09-032.001, PPIN 35094, Lamar Co., Ward 3).



Vicinity Map—Ward 3



Zoning—R-5



Site Aerial



SURROUNDING AREA

Northern Direction: B-5



Southern Direction: B-5



Eastern Direction: B-5

Western Direction: B-5





**Board of Adjustment
Case Fact Sheet**

Name of Petitioners: Justin Woodward, Representative, and Roddy Rumbley, Owner

Address of Property:
6439 US HWY 98 W

Tax Parcel
052N-09-032.001

PPIN:
35094

Ward:
3

Request: **Zoning Change from I-1 to B-5**

Purpose of Request: To consider variance from section 10, Table 10.6 "Minimum Front Sign Setback" for a pole sign in B-5, "10 ft" and instead allow a sign setback of 0 feet for a variance of 10 feet along US HWY 98 W for a proposed sign to be located at 6439 US HWY 98 W (Parcel 052N-09-032.001, PPIN 35094, Lamar Co., Ward 3).

Applicant Summary: See Attached

Applicable Regulations:

SECTION 10

Table 10.6 - 2 Dimensional Requirements By Sign Type					
Sign Type	Sign Height/Width (max)	Sign Message Area (max) (sq. ft.)	Setback (min.)		Additional Criteria
			Front	Side	
On Premises Signs Freestanding					
Monument Sign	10'/None	All applicable zones except I-1 and I-2 – 50 square feet;	5'	15'	1 per 500' of parcel street frontage /2 on corner lot (1 per street) with 150' min. frontage for any on premises freestanding sign; bottom edge of message area is min 18" and max 30" above ground; dimensions include multitenant signs
		For I-1 and I-2 – 72 square feet			
Pole Sign	35'/20'	For B-3 – 1square foot sign message area/1' street frontage up to 200 square feet	10'	15'	1 per 500' of parcel street frontage/2 on corner lot (1 per street) with 150' min. street frontage for any on premises freestanding sign; Bottom edge of message area is min. 6' above ground; dimensions include multitenant signs
		B-5, I-1, I-2 – 2 square feet sign message area/1' street frontage up to 400 square feet			

Present Zoning: This parcel is currently B-5 Regional Business District

Present Use: Commercial

Future Land Use: Regional Business Corridor District

Letters or Concerns stated: The Planning Division Office has not received any letters or other written communications relative to this case as of November 23, 2021.

Basis for Approval (12.4.1.1):

I. Hardship.

- The hardship is unique to the property and is not or will not be caused by the actions or inactions of the applicant.
- There are exceptional conditions creating an undue hardship applicable only to the property involved or the intended use which do not apply generally to the other land areas or uses within the same zoning district.

II. Special Privilege. A variance shall not confer any special privilege that is denied to other lands or structures in the same zoning district.

III. Literal Interpretation. The literal interpretation of the provisions of the regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district and would cause unnecessary and undue hardship on the applicant.

IV. Reasonable Use. The applicant cannot make reasonable use of the property without the requested variance.

V. Minimum Required. The granting of a variance is the minimum variance that will make possible the reasonable use of the land or structure.

Item: B
Justin Woodward, Representative, and Roddy Rumbley, Owner
Request for: **Sign Setback Variance**

VI. Conformance with the Purposes of this Code. The granting of a variance will not conflict with the purposes and intent expressed or implied in the Land Development Code.

The Board of Adjustment has the responsibility to hear and make recommendation on requests for variances to the requirements of this Code (per Section 11.4.). Section 12.4.1 Variances are departures from the standards of the Land Development Code, except land use, which will not be contrary to the public interest and where, owing to conditions peculiar to the property and not as a result of the action of the applicant, a literal enforcement of this Code would result in unnecessary and undue hardship.

The following conditions must be met before a variance can be recommended. Not all criteria must be met. However, a strong application will meet multiple criteria.

Approval Criteria.

A variance is not a right, but a privilege that property owners meeting the following criteria may request. These criteria are to be used to consider all variance requests. It shall be the burden of the applicant to prove that the request meets these criteria. Use this worksheet or format your own to demonstrate the following criteria.

1. **Hardship.** (a) The hardship is unique to the property and is not or will not be caused by the actions or inactions of the applicant. (b) There are exceptional conditions creating an undue hardship applicable only to the property involved or the intended use which do not apply generally to the other land areas or uses within the same zoning district.

The customer would like to request a 0' setback for his sign so it can be seen from the road. There is a piece of a sidewalk pushing his property line back. He wishes to butt the sign to the property line for visibility along US 98.

2. **Special Privilege.** A variance shall not confer any special privilege that is denied to other lands or structures in the same zoning district.

The variance would not affect neighbors in any way.

3. **Literal Interpretation.** The literal interpretation of the provisions of the regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district and would cause unnecessary and undue hardship on the applicant.

The code would have the sign too far from the road and clustered near the building.

4. **Reasonable Use.** The applicant cannot make reasonable use of the property without the requested variance.

We have tried with other placements but none achieve the same goal.

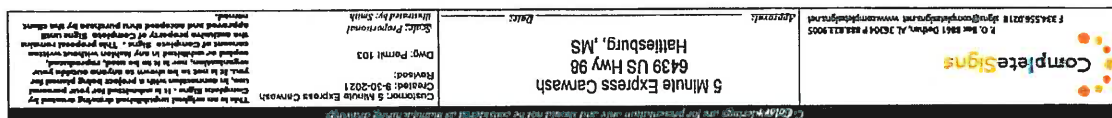
5. **Minimum Required.** The granting of a variance is the minimum variance that will make possible the reasonable use of the land or structure.

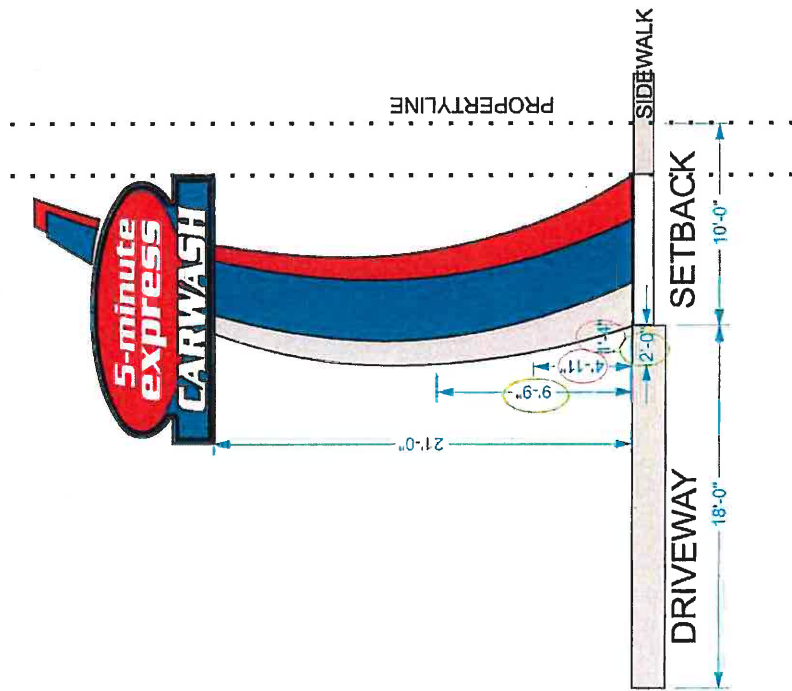
We are not asking to put the sign by the road, just at the edge of the property line.

6. **Conformance with the Purpose of this Code.** The granting of a variance will not conflict with the purposes and intent expressed or implied in the Land Development Code.

Correct.

12.4.1.2 Conditions of Approval. In recommending the granting of a variance, the Board of Adjustment may require appropriate conditions and safeguards in conformity with this Code. Violation of such conditions and safeguards, when made a part of the terms under which a variance is granted, shall be deemed a violation of this Code. The recommendation of the Board of Adjustment shall be presented to the City Council for final action.





EXISTING LANDSCAPING NOTE:

THE EXISTING SHUBS/TREES AT THE BOUNDARY OF THE PROJECT BOUNDARIES ARE PART OF AN EXISTING AGREEMENT FOR THE DEVELOPMENT OF THE PROPERTY THAT ARE TO BE PROTECTED - SEE LANDSCAPE PLANS.

CONTRACTOR RECORDS:

THE CONTRACTOR SHALL MAINTAIN RECORD DRAWINGS DURING CONSTRUCTION TO WHICH ALL BUILDING CONDITIONS OF ALL WORK INCLUDING PAVING, DRAINAGE STRUCTURES, GRADING, ETC. RECORD DRAWINGS SHALL BE PROVIDED THE ENGINEER OF RECORD PRIOR TO BEGINNING FINAL INSPECTION.

MISSISSIPPI DEPARTMENT OF TRANSPORTATION (MDOT)

THE CONTRACTOR SHALL NOTIFY MISSISSIPPI DEPARTMENT OF TRANSPORTATION (MDOT) 48 HOURS IN ADVANCE TO PERMIT ANY WORK IN THE STATE RIGHTS OF WAY.

INSPECTION NOTE:

THE OWNER OR HIS AGENT SHALL MAINTAIN ACCESSIBLE ADJUT THE COUNTY A JAIL INSPECTION OF THE DEVELOPMENT UPON 601-554-1401. AS-BUILT CERTIFICATIONS ARE REQUIRED PRIOR TO FINAL INSPECTION/APPROVAL.

COMPLETION NOTICE:

ALL ASPECTS OF THE STORMWATER/DRAINAGE COMPONENTS AND FOR TRANSPORTATION COMPONENTS SHALL BE COMPLETED PRIOR TO ISSUANCE OF A FINAL CERTIFICATE OF OCCUPANCY.

PLAN DEVIATION:

NO DEVIATIONS OR MODIFICATIONS FROM THESE PLANS BY THE CONTRACTOR SHALL BE ALLOWED WITHOUT PRIOR APPROVAL FROM BOTH THE DESIGN ENGINEER AND THE CITY OF HATTIESBURG. ANY DEVIATIONS MAY RESULT IN DELAYS IN OBTAINING A CERTIFICATE OF OCCUPANCY.

SUNSHINE UTILITIES NOTIFICATION:

NOTIFY THE CITY OF HATTIESBURG DEPT. OF ENGINEERING 48 HOURS IN ADVANCE OF ANY WORK IN ADJACENT TO STREETS OR A DESIGNATED AREA OF PEDESTRIAN TRAVEL SHALL BE PAINTED SAFETY YELLOW.

DAMAGE TO EXISTING FACILITIES:

ANY DAMAGE TO EXISTING ROADS DURING CONSTRUCTION WILL BE REPAIRED BY THE CONTRACTOR. ANY DAMAGE TO EXISTING UTILITIES SHALL BE REPAIRED BY THE CONTRACTOR. ANY DAMAGE TO EXISTING FACILITIES SHALL BE REPAIRED BY THE CONTRACTOR.

ROOF DRAINAGE NOTE:

ALL ROOF DRAINAGE SYSTEMS SHALL BE DESIGNED TO DRAIN AWAY FROM BUILDINGS. THE ROOF DRAINAGE SYSTEM SHALL BE DESIGNED TO DRAIN AWAY FROM BUILDINGS.

EROSION CONTROL WARNING:

THE CONTRACTOR SHALL MAINTAIN ALL EROSION CONTROL MEASURES AS REQUIRED TO REMAIN ALL EROSION CONTROL MEASURES AS REQUIRED TO REMAIN ALL EROSION CONTROL MEASURES AS REQUIRED TO REMAIN.

FINISH PAD NOTE:

CONTRACTOR TO VERIFY ANCHOR BOLTS ARE INSTALLED IN FINISH PAD. CONTRACTOR TO VERIFY ANCHOR BOLTS ARE INSTALLED IN FINISH PAD.

POTABLE WATER NOTE:

ALL POTABLE WATER SYSTEMS SHALL BE DESIGNED TO DRAIN AWAY FROM BUILDINGS. ALL POTABLE WATER SYSTEMS SHALL BE DESIGNED TO DRAIN AWAY FROM BUILDINGS.

GENERAL SITE GRADING NOTES:

- TOP SOIL TO BE SPREAD UPON COMPLETED GRADE.
- ALL SLOPE TO BE MAINTAINED TO PREVENT EROSION.
- ALL EXCESS DRAINAGE MATERIAL TO BE REMOVED FROM SITE.
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FOUNDATION NOTES:

- FOUNDATION SHALL BE DESIGNED TO DRAIN AWAY FROM BUILDINGS.
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BUILDING PAD PREPARATION NOTES:

- THE AREA TO BE PREPARED SHALL BE STRIPPED OF ALL VEGETATION.
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IRIGATION NOTES:

THE CONTRACTOR SHALL COORDINATE THE IRRIGATION SYSTEM WITH THE CITY OF HATTIESBURG.

BACKFLOW PREVENTORS:

THE CONTRACTOR SHALL INSTALL BACKFLOW PREVENTORS AS REQUIRED BY THE CITY OF HATTIESBURG.

GENERAL NOTES:

- CONTRACTOR TO VERIFY ALL MATERIALS ARE AS SPECIFIED.
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POSSIBLE WATER NOTE:

ALL POSSIBLE WATER SYSTEMS SHALL BE DESIGNED TO DRAIN AWAY FROM BUILDINGS.

FINISH PAD NOTE:

CONTRACTOR TO VERIFY ANCHOR BOLTS ARE INSTALLED IN FINISH PAD.

CURB NOTE:

CONTRACTOR TO VERIFY CURB IS INSTALLED AS SPECIFIED.

GENERAL SITE NOTES:

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BUILDING PAD PREPARATION NOTES:

- THE AREA TO BE PREPARED SHALL BE STRIPPED OF ALL VEGETATION.
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IRIGATION NOTES:

THE CONTRACTOR SHALL COORDINATE THE IRRIGATION SYSTEM WITH THE CITY OF HATTIESBURG.

BACKFLOW PREVENTORS:

THE CONTRACTOR SHALL INSTALL BACKFLOW PREVENTORS AS REQUIRED BY THE CITY OF HATTIESBURG.

GENERAL NOTES:

- CONTRACTOR TO VERIFY ALL MATERIALS ARE AS SPECIFIED.
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POSSIBLE WATER NOTE:

ALL POSSIBLE WATER SYSTEMS SHALL BE DESIGNED TO DRAIN AWAY FROM BUILDINGS.

FINISH PAD NOTE:

CONTRACTOR TO VERIFY ANCHOR BOLTS ARE INSTALLED IN FINISH PAD.

CURB NOTE:

CONTRACTOR TO VERIFY CURB IS INSTALLED AS SPECIFIED.

GENERAL SITE NOTES:

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ROOF DRAINAGE NOTE:

ALL ROOF DRAINAGE SYSTEMS SHALL BE DESIGNED TO DRAIN AWAY FROM BUILDINGS.

EROSION CONTROL WARNING:

THE CONTRACTOR SHALL MAINTAIN ALL EROSION CONTROL MEASURES AS REQUIRED TO REMAIN ALL EROSION CONTROL MEASURES AS REQUIRED TO REMAIN.

FINISH PAD NOTE:

CONTRACTOR TO VERIFY ANCHOR BOLTS ARE INSTALLED IN FINISH PAD.

POTABLE WATER NOTE:

ALL POTABLE WATER SYSTEMS SHALL BE DESIGNED TO DRAIN AWAY FROM BUILDINGS.

GENERAL SITE GRADING NOTES:

- TOP SOIL TO BE SPREAD UPON COMPLETED GRADE.
- ALL SLOPE TO BE MAINTAINED TO PREVENT EROSION.
- ALL EXCESS DRAINAGE MATERIAL TO BE REMOVED FROM SITE.
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FOUNDATION NOTES:

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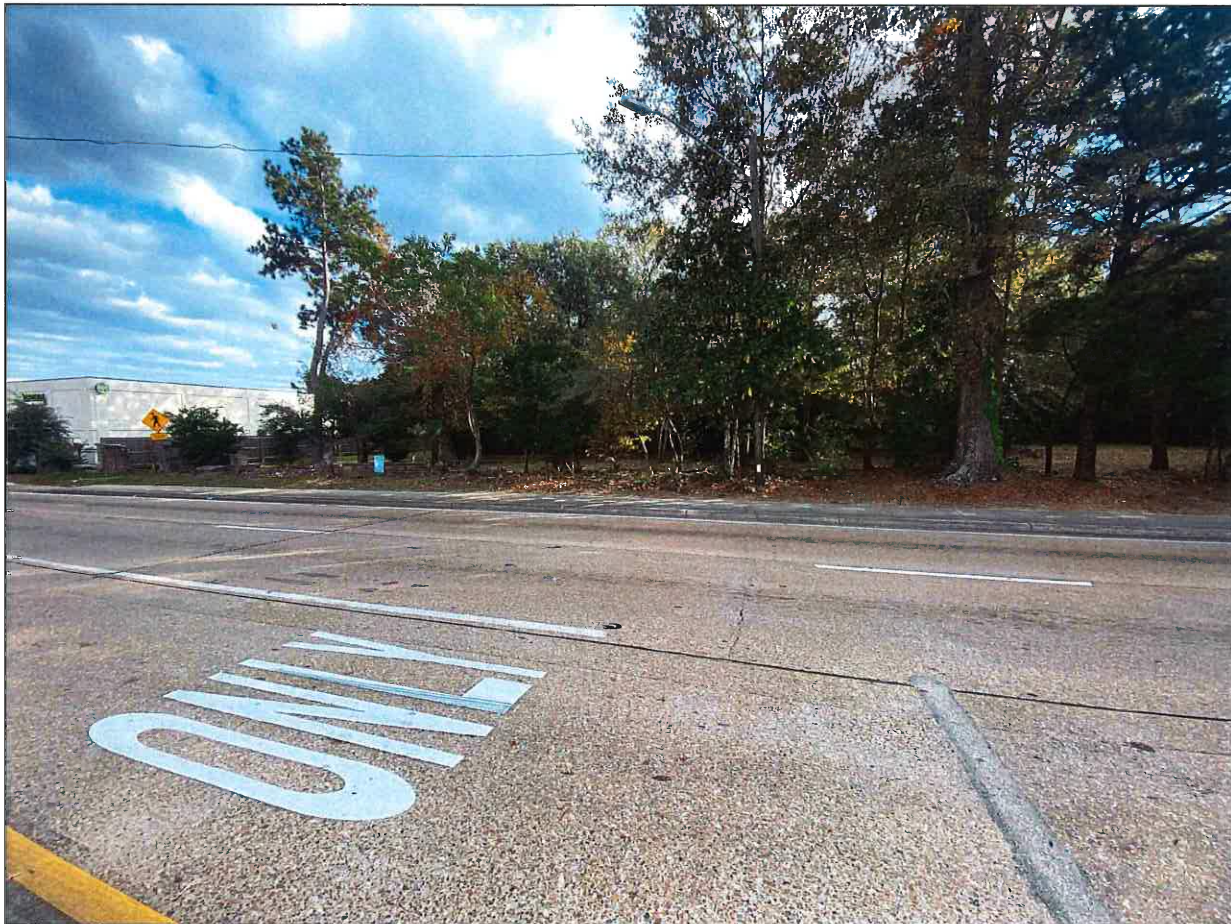
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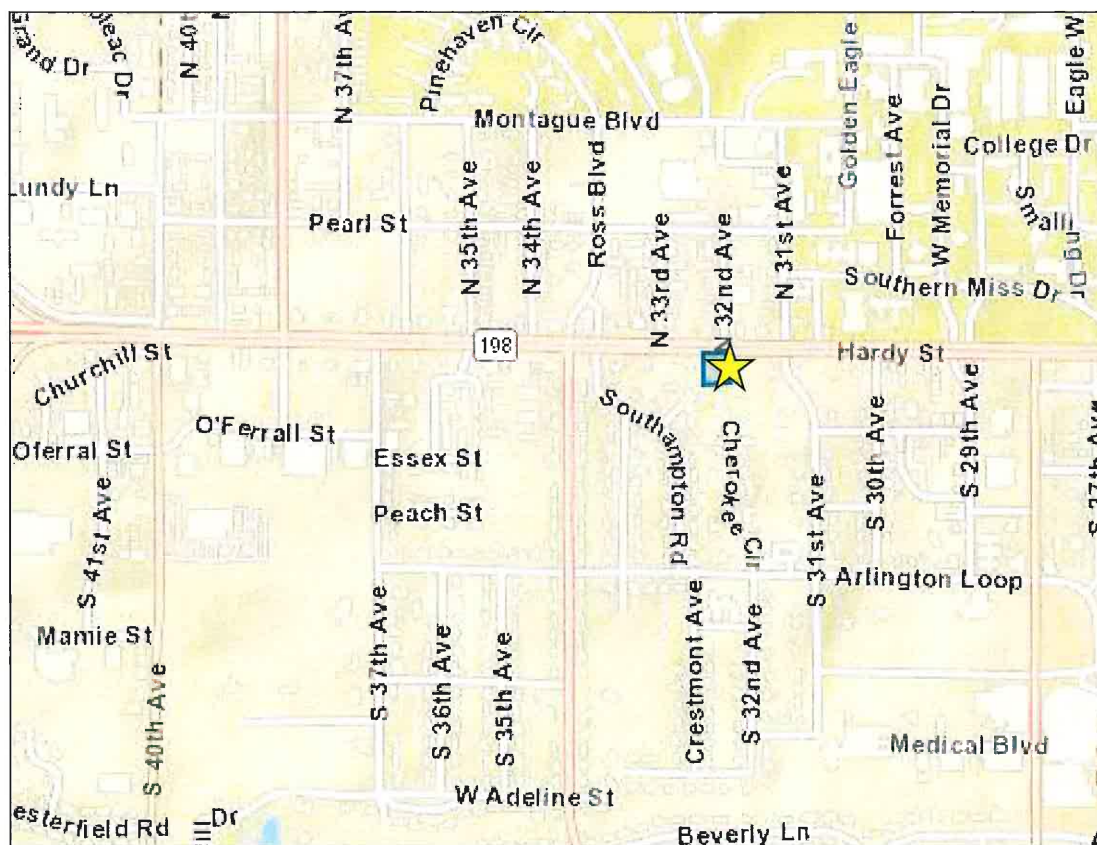
SUBJECT PARCEL:
3100 block of Hardy St

Forrest Dungan, Engineer, and Lynn Crosby Gammil, Owner, and SDP MS
Hattiesburg 1, LLC, Applicant

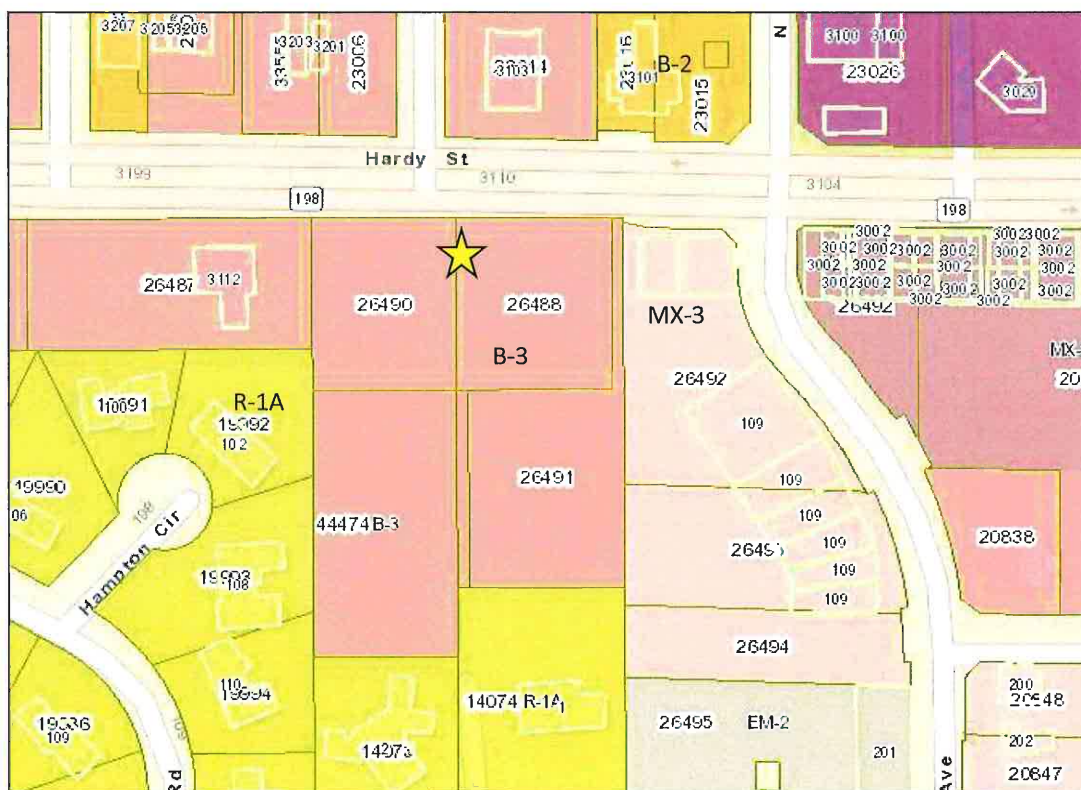
Request a variance from section 5.4.36.4, which states: no part of the active use area of a drive through restaurant, including the drive through, menu, and window, may be located closer than three hundred (300) feet to a lot containing a legal, conforming residential use, and instead allow for a distance of one hundred and twenty two point seven (122.7) feet of the active area of a drive through for a restaurant to a lot containing a legal, conforming residential use for a proposed development for undeveloped lots in the 3100 block of Hardy St (Parcel No. 2-028N-07-095.00, 2-028N-07-094.00, 2-028N-07-096.01; PPINs 26490, 26488, 44474).



Vicinity Map—Ward 3



Zoning—B-3



SURROUNDING AREA

**Northern Direction: B-2 & B-3
Commercial**



**Southern Direction: R-1A Single
Family Residential**



**Eastern Direction: MX-3 Mixed Use
For-based code development.**

**Western Direction: B-3 Commercial
& R-1A Single Family Residential**





**Board of Adjustment
Case Fact Sheet**

Name of Petitioners: Forrest Dungan, Engineer, and Lynn Crosby Gammil, Owner, and SDP MS Hattiesburg 1, LLC, Applicant

Address of Property:	Tax Parcel	PPIN:	Ward:
3100 Hardy Street block	2-028N-07-095.00	26490	3
	2-028N-07-094.00	26488	
	2-028N-07-096.01	44474	

Request: **Variance – Drive through**

Purpose of Request: To consider a variance from section 5.4.36.4, which states: no part of the active use area of a drive through restaurant, including the drive through, menu, and window, may be located closer than three hundred (300) feet to a lot containing a legal, conforming residential use, and instead allow for a distance of one hundred and twenty two point seven (122.7) feet of the active area of a drive through for a restaurant to a lot containing a legal, conforming residential use for a proposed development for undeveloped lots in the 3100 block of Hardy St (Parcel No. 2-028N-07-095.00, 2-028N-07-094.00, 2-028N-07-096.01; PPINs 26490, 26488, 44474).

Applicant Summary: See Attached

Applicable Regulations:

SECTION 5

5.4.36 Restaurants With and Without Drive-Through Service.

5.4.36.1 All restaurants with drive-through service shall provide a minimum of five stacking spaces associated with each drive through window.

5.4.36.2 No required or intended stacking spaces shall block the safe flow of motoring and pedestrian traffic within the parking lot.

5.4.36.3 Drive-through facilities located closer than 300 feet to a residential use shall operate no earlier than 6:00 a.m. or later than

12:00 a.m.

5.4.36.4 No part of the active use area of a drivethrough restaurant, including the drive through, menu, and window, may be located closer than 300 feet to a lot containing a legal, conforming residential use.

5.4.36.5 All restaurants located within the B-1 and B-2 districts shall be limited to a capacity of 80 seats.

5.4.36.6 All restaurants that abut residential districts shall be screened entirely from view of adjacent residential properties by an opaque fence and/or vegetative screen to a minimum height of six feet. Such screen shall meet the minimum height requirement at the time of issuance of a certificate of occupancy.

TABLE 7.11-2 Zoning Buffer Requirements

B-2 – R-1A required 20' landscaped buffer

Present Zoning:	This parcel is currently zoned B-3 Community Business District
Present Use:	Undeveloped
Future Land Use:	Community Business Corridor District
Surrounding Zoning and Land Use:	North: B-3 Community Business District/ Commercial South: R-1A Single Family Residential East: M-X3 Commercial form-based development West: B-3 Community Business District/ Commercial & R-1A Single Family Residential
Letters or Concerns stated:	The Planning Division Office has not received any letters or other written communications relative to this case as of November 23, 2021.
History / Background:	The applicant met with staff in Pre-Application to discuss redevelopment as a restaurant with drive through services and other commercial. The Board of Adjustment should consider the impact a drive-through has on neighboring residential properties including sound, smell, as well as visual impact. Additionally, drive-throughs will add an increase in vehicular traffic immediately adjacent to a pedestrian oriented development. Traffic maneuvers should also be considered at this location as well, with limited access to Hardy Street west-bound traffic. The Midtown Form-based Code limits drive-through access to Hardy Street by requiring Planning Commission approval.

Basis for Approval (12.4.1.1):

I. Hardship.

- The hardship is unique to the property and is not or will not be caused by the actions or inactions of the applicant.
- There are exceptional conditions creating an undue hardship applicable only to the property involved or the intended use which do not apply generally to the other land areas or uses within the same zoning district.

II. Special Privilege. A variance shall not confer any special privilege that is denied to other lands or structures in the same zoning district.

III. Literal Interpretation. The literal interpretation of the provisions of the regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district and would cause unnecessary and undue hardship on the applicant.

IV. Reasonable Use. The applicant cannot make reasonable use of the property without the requested variance.

V. Minimum Required. The granting of a variance is the minimum variance that will make possible the reasonable use of the land or structure.

VI. Conformance with the Purposes of this Code. The granting of a variance will not conflict with the purposes and intent expressed or implied in the Land Development Code.

Variance Information

The Board of Adjustment has the responsibility to hear and make recommendation on requests for variances to the requirements of this Code (per Section 11.4.). Section 12.4.1 Variances are departures from the standards of the Land Development Code, except land use, which will not be contrary to the public interest and where, owing to conditions peculiar to the property and not as a result of the action of the applicant, a literal enforcement of this Code would result in unnecessary and undue hardship.

The following conditions must be met before a variance can be recommended. Not all criteria must be met. However, a strong application will meet multiple criteria.

Approval Criteria.

A variance is not a right, but a privilege that property owners meeting the following criteria may request. These criteria are to be used to consider all variance requests. It shall be the burden of the applicant to prove that the request meets these criteria. Use this worksheet or format your own to demonstrate the following criteria.

1. **Hardship.** (a) The hardship is unique to the property and is not or will not be caused by the actions or inactions of the applicant. (b) There are exceptional conditions creating an undue hardship applicable only to the property involved or the intended use which do not apply generally to the other land areas or uses within the same zoning district.

2. **Special Privilege.** A variance shall not confer any special privilege that is denied to other lands or structures in the same zoning district.

3. **Literal Interpretation.** The literal interpretation of the provisions of the regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district and would cause unnecessary and undue hardship on the applicant.

The City of Hattiesburg code of ordinances does not differentiate between a drive through fast food restaurant and a restaurant with a pick up window. Therefore, the literal interpretation of the code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district as the the two proposed restaurants would not offer a menu board, drive through speaker or the ability to order in line for or at the pick up window. The restaurants would have a window that existed solely for the purpose of pick up orders. Any or all ordering would be done off premises and the window would exclusively be used for pick up/catering orders.

Variance Information

4. **Reasonable Use.** The applicant cannot make reasonable use of the property without the requested variance.

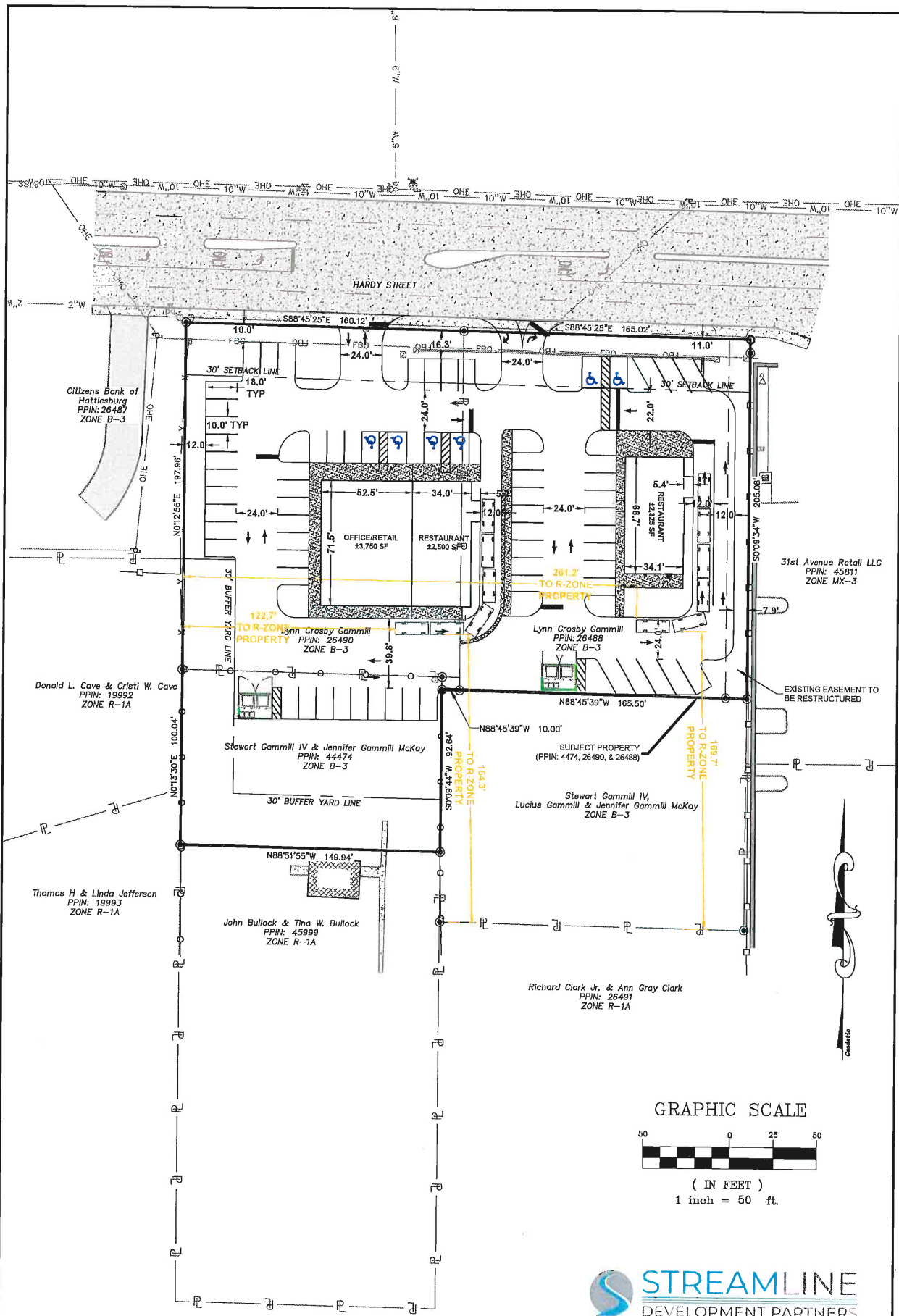
5. **Minimum Required.** The granting of a variance is the minimum variance that will make possible the reasonable use of the land or structure.

While engineering the site the applicant designed the site plan in order for both windows to be as far away from any residential users as the property dimensions allow.

6. **Conformance with the Purpose of this Code.** The granting of a variance will not conflict with the purposes and intent expressed or implied in the Land Development Code.

The granting of this variance will not conflict with the purposes and intent of the Land Development Code as the intent of the pick up/catering window varies from the intended intent impressed upon fast food restaurants. There is a stark contrast from a true fast food restaurant with ordering capabilities and a restaurant that includes a window for orders previously placed off site to be picked up by the customer.

12.4.1.2 Conditions of Approval. In recommending the granting of a variance, the Board of Adjustment may require appropriate conditions and safeguards in conformity with this Code. Violation of such conditions and safeguards, when made a part of the terms under which a variance is granted, shall be deemed a violation of this Code. The recommendation of the Board of Adjustment shall be presented to the City Council for final action.



Clearpoint
CONSULTING ENGINEERS, P.A.

6652 US Highway 98 | Hattiesburg, MS 39402
t 601.261.2609 | f 601.261.5573 | clearpointengineers.com

MIDTOWN DEVELOPMENT
STREAMLINE DEVELOPMENT PARTNERS
10-25-2021
HATTIESBURG, MS

**VARIANCE
LAYOUT**

STREAMLINE
DEVELOPMENT PARTNERS