

Place: Jackie Dole Sherrill Community Center (Dining Room)

Time: 3:30 PM

Board of Adjustment

AGENDA

1/5/2022

I. Business Meeting

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

II. Public Hearing

1. Old Business

Remove from the table and consider a petition 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).

A.

2. Presentation of Petitions for Public Hearing

A petition has been filed by Robert G Smith and Gary W Adams, Owners, as required in the Land Development Code, Ord. No. 3209, to request a variance from section 6, Table 6.1 "Minimum Side Setback" for R-1A, "10 feet", and instead allow a setback of 0 feet for a variance of 10 feet for a proposed accessory building at 2505 Arcadia Street (Parcel 2-039B-17-136.00, PPIN 24511, Ward 4).

A.

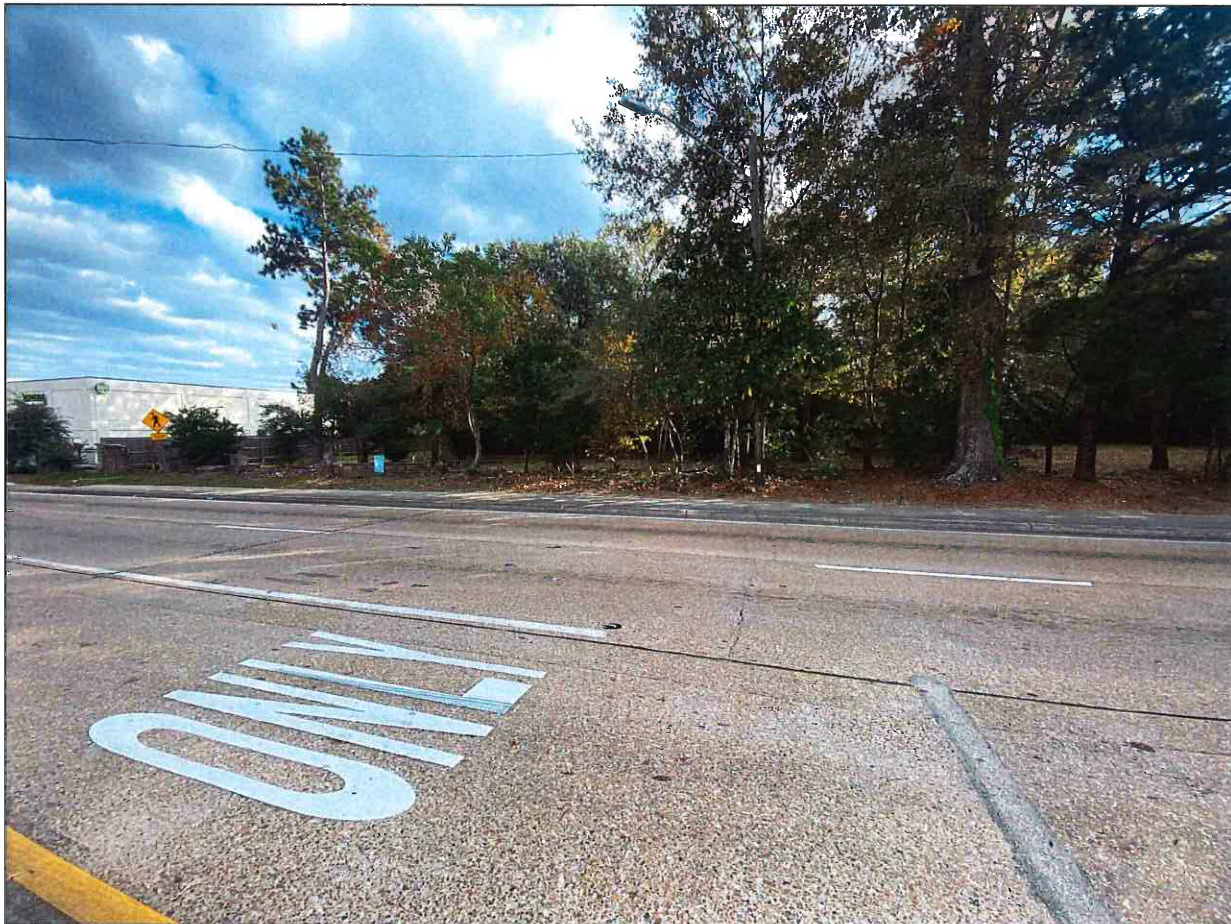
III. Other Business

IV. Adjournment

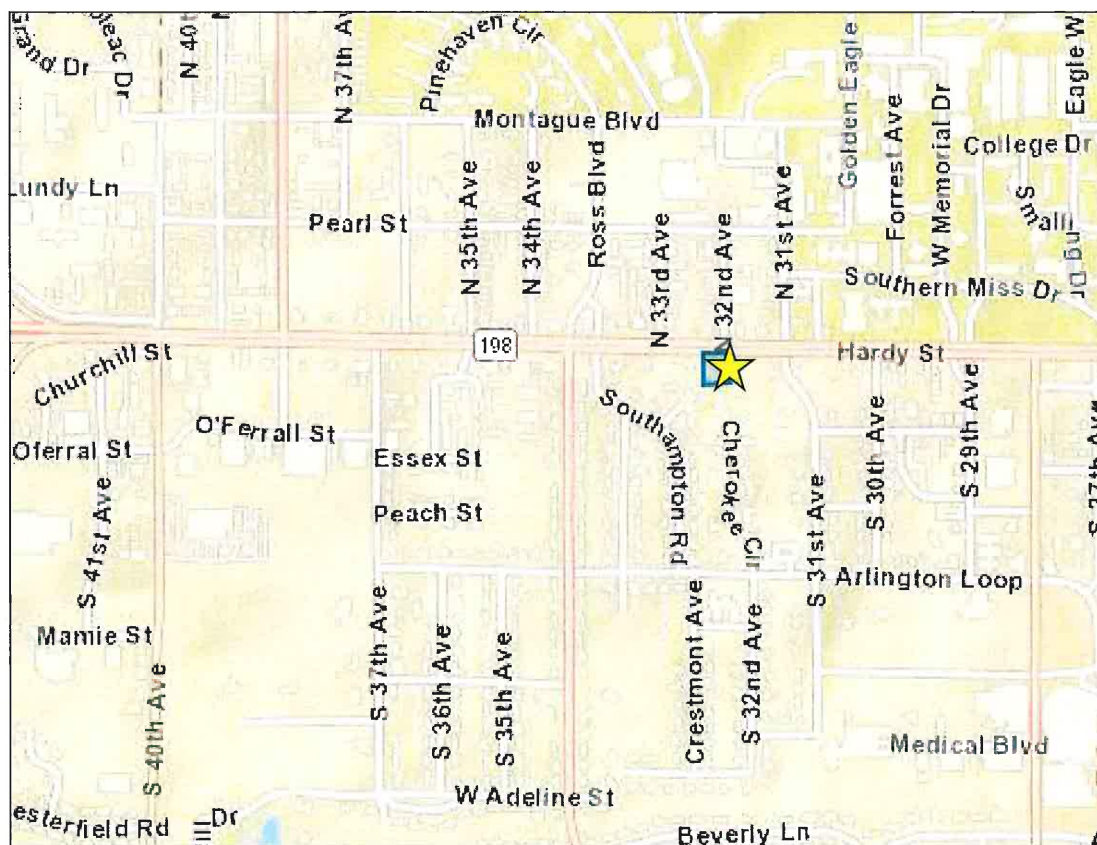
SUBJECT PARCEL:
3100 block of Hardy St

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

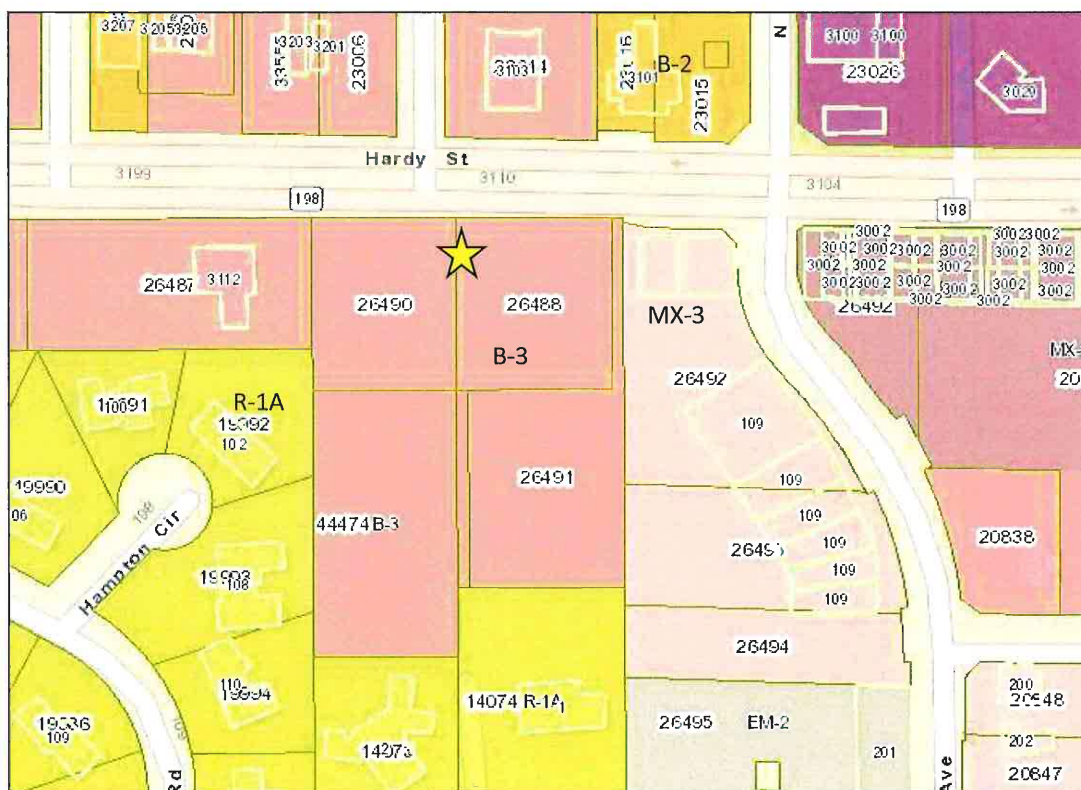
Request a variance from section 5.4.36.4, which states: no part of the active use area of a drive through restaurant, including the drive through, menu, and window, may be located closer than three hundred (300) feet to a lot containing a legal, conforming residential use, and instead allow for a distance 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.

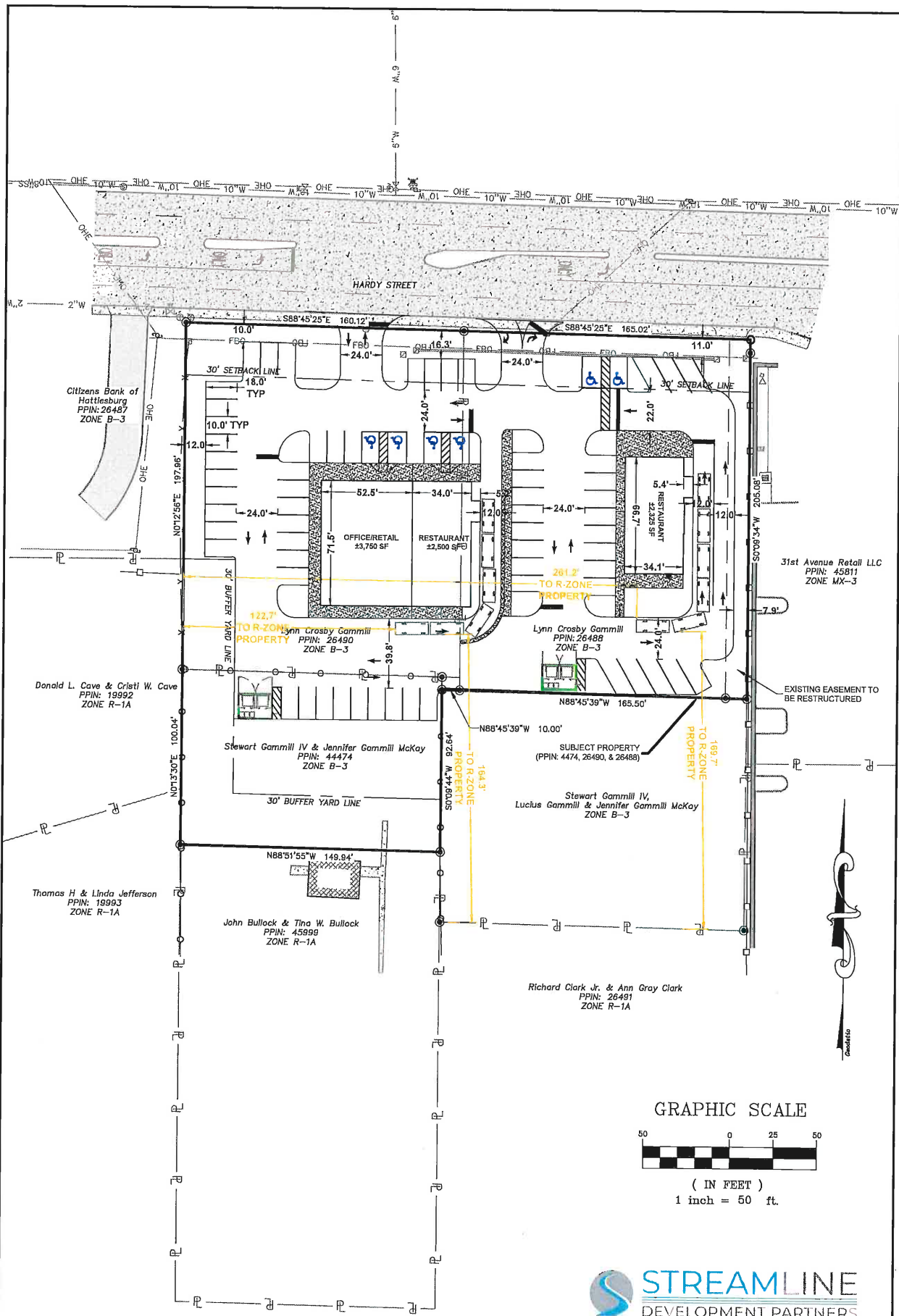
5. **Minimum Required.** The granting of a variance is the minimum variance that will make possible the reasonable use of the land or structure.

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**



**Board of Adjustment
Case Fact Sheet**

Name of Petitioners: Robert G Smith and Gary W Adams, Owners

Address of Property: 2505 Arcadia St
Tax Parcel: 2-039B-17-136.00
PPIN: 24511
Ward: 3

Request: Side Setback Variance

Purpose of Request: To consider a variance from section from Section 6, Table 6.1 "Minimum Side setback" for R-1A, "10 feet", and instead allow for a setback of zero feet (0 ft) for a variance of ten (10 ft) for a proposed accessory building at 2505 Arcadia St (Parcel 2-039B-17-136.00, PPIN 24511, Ward 4).

Applicant Summary: See Attached

Applicable Regulations:

Table 6.1 Dimensional Standards										
District	Minimum Lot Size in SF/ Width at Setback	Max. Dwelling Units	Max. Floor Area Ratio	Min. Front	Setbacks in feet			Max. Height*	Max. Impervious Surface Lot Coverage	Buffer in Feet
					Max. Front	Min. Side	Min. Rear			
R-1A	10,000/ 50	1 per lot	-	30	-	10	25	35 feet or 3 stories	50%	-

SECTION 5

5.4.2 Accessory Uses, Buildings

5.4.2.1 In no event shall "accessory use" or "accessory structure" be construed to authorize a use or structure not otherwise permitted in the district in which the principal use is located.

5.4.2.2 All accessory uses and accessory structures shall conform to the applicable requirements of this ordinance, including all dimensional requirements and use, design, and landscaping standards applicable to the primary use/ structure. The provisions of this section establish additional requirements and restrictions for particular accessory uses and structures.

5.4.2.3 Accessory uses and structures that are clearly related to and incidental to the permitted principal use or structure on the lot are permitted in all districts.

5.4.2.4 All accessory uses and structures shall require the issuance of a certificate of zoning compliance.

5.4.2.5 Structures accessory to residential uses (except for agricultural buildings located in agricultural districts) shall have a combined floor area (aggregate of all detached accessory structures) of no more than 33% of the total floor area of the principal structure.

5.4.2.6 No accessory structure shall be located in a required front yard nor shall any accessory structure on a residential lot located in any zoning district be placed between the street and the rear building line of the principal structure except that:

- i. In the A1 District, accessory structures located more than 100 feet from the primary street may be placed in the front yard; and
- ii. Detached garages shall be permitted in side yards.
- iii. Accessory residential structures shall be five (5) feet from the rear property line and five (5) feet from the side property lot. No accessory structure on a corner lot shall project beyond the front yard line of the lots in the rear

SECTION 6

6.7.2 Measuring Structure Distance. When determining distances for setbacks and structure dimensions, all distances are measured along a horizontal plane from the appropriate property line, edge of building, structure, storage area, parking area, or other object. These distances are not measured by following the topography of the land. Measurements are also taken along the shortest distance between two points. See Diagram 6.2.

Present Zoning:	R-1A (Single Family Residential) District
Present Use:	Residence
Future Land Use:	Neighborhood Conservation District 2

**Surrounding Zoning:
and Land Use:**

North: R-1A (Single Family Residential) District/ Residential
South: R-1A (Single Family Residential) District/ Residential
East: R-1A (Single Family Residential) District/ Residential
West: R-1A (Single Family Residential) District/ Residential

**Letters or
Concerns stated:**

The Planning Division Office has not received any letters or other written communications relative to this case as of December 27, 2021. The Applicant submitted letters of support from neighbors.

History / Background:

The petitioner met with Staff to discuss the addition of a detached garage in the side yard. The plans submitted showed the detached garage encroaching on the required setback and is considered an accessory structure. Detached garages are permitted as accessory structures in side yards (LDC 5.4.2.6.ii). The proposed detached garage also meets size requirements for accessory structures (Structures accessory to residential uses shall have a combined floor area of no more than 33% of the total floor area of the principal structure).

Basis for Approval (12.4.1.1):

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Variance Information

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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.

DATE: November 22, 2021

TO: Board of Adjustment

FROM: Robert G. Smith and Gary W. Adam

We are seeking this variance to have reasonable use of the driveway that is situated at the property line on the West side of our property. In April 2021, we enclosed our carport-storage room to increase the living space in our home. As a result, we lost our only covered parking space and storage room. The structures we are wanting to build will not be attached to the our home and will be abut the property line between our property (2505 Arcadia Street) and our neighbor's property (2507 Arcadia Street). These structures are fifteen feet from the eastern wall of our neighbor's home. The project does not encroach on our neighbor's property but does afford to us a covered parking area and storage room.

SUBJECT PARCEL: 2505 Arcadia St

Robert G Smith and Gary W Adams, Owners.

The petitioner requests to vary from Section 6, Table 6.1 “Minimum Side Setback” for R-1A, “10 feet”, and instead allow a setback of 0 feet for a variance of 10 feet for a proposed accessory building at 2505 Arcadia Street (Parcel 2-039B-17-136.00, PPIN 24511, Ward 4).





Area Building Footprints and Parcel Lines



Site Aerial



SURROUNDING AREA

**Northern Direction: R-1A (Single Family Residential) District/
Residential**



**Southern Direction: R-1A (Single Family Residential) District/
Residential**

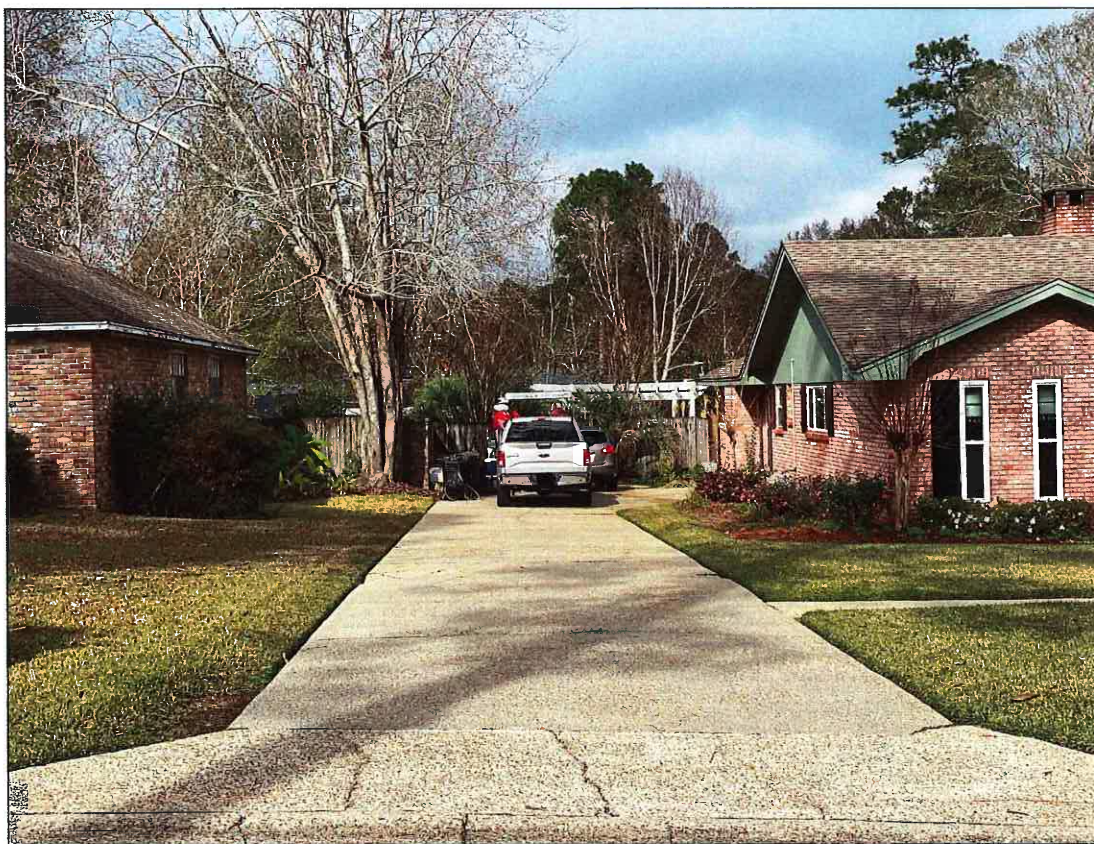


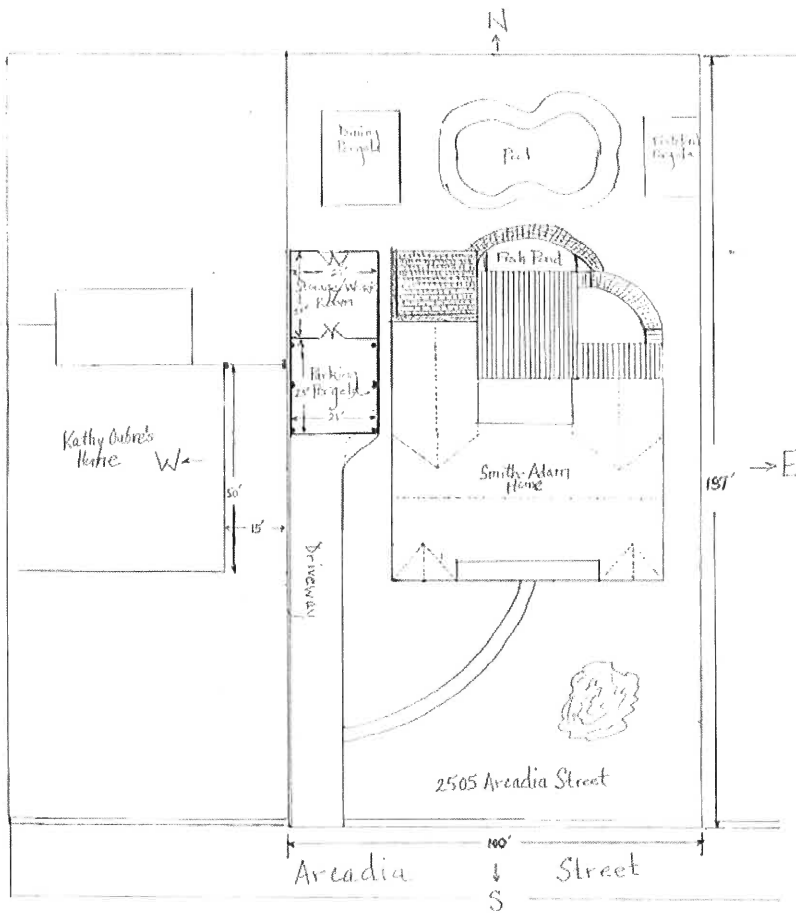
**Eastern Direction: R-1A(Single Family Residential) District/
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**Western Direction: R-1A (Single Family Residential) District/
Residential**

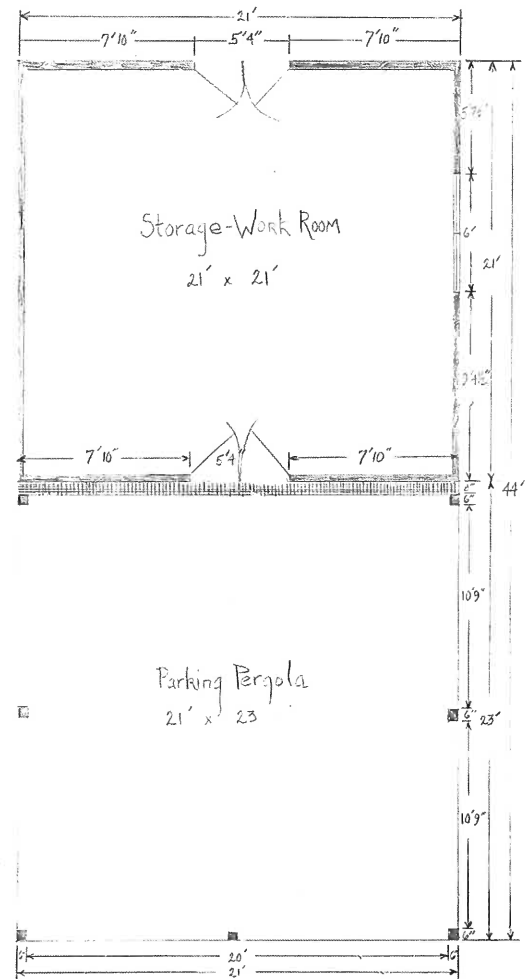
Location of Proposed Detached Garage





Site Drawing

Floor Plan



Addition Elevations

