



URBAN DEVELOPMENT PLANNING DIVISION

MEMORANDUM

TO: Hattiesburg Planning Commission and Board of Adjustment
FROM: Planning Staff
DATE: August 24th, 2022
SUBJECT: September 7th, 2022 Hattiesburg Planning Commission

The **Hattiesburg Planning Commission** will meet in regular session at 1:00 pm. Wednesday, September 7th, 2022 in the dining room of the Jackie Dole Sherrill Community Center. The Planning Commission public hearing agenda contains two (2) items: one (1) zoning change, and one (1) appeal.

The **Board of Adjustment** will not meet in regular session for the September hearing as no applications were received.

Due to the ongoing public health concerns of COVID-19, the public and members may attend remotely via GoToMeeting:

<https://www.gotomeet.me/COHPlanningDivision/publichearing>

You can also dial in toll-free using your phone:

United States: +1 (571) 317-3122; Access Code: 630-312-989

If unable to attend, or if you know that you will need to recuse yourself from any item, please contact our office prior to the meeting date so we can ensure a quorum.

If you have any questions or need further information, please do not hesitate to call me at (601)545-4599.

Enclosure

cc: Toby Barker, Mayor
Ann Jones, Chief Administrative Officer
Randy Pope, City Attorney
Jim Gladden, Attorney
Ronda Cole Kennedy, Council Clerk
Ginger M. Lowrey, AICP, Planning Div. Manager
Wiley Quinn, Code Enforcement Manager
Nathan Satcher, Planner
Russell Archer, Historic Planner
Lamar Rutland, Director of Engineering
Andy Parker, City Arborist
Kevin Bates, Building Official

Planning Commission Agenda
Place: Jackie Dole Sherrill Community Center (Dining Room)
Time: 1:00 PM
09/07/2022

I. Business Meeting

1. Review and approval of September meeting's agenda
2. Review and approval of the minutes of the August meeting
3. Building Report
4. Planning Report
5. Chair's Report
6. Introductions

II. Public Hearing

1. Presentation of Petitions for Public Hearing
 - A. A petition has been filed by Dennis Pierce, owner, as required in the Land Development Code, Ord. No. 3209, to change the zoning classification for a property located at 4 Willow Pointe (Parcel 051L-11-038.000, PPIN 20292; Lamar County, Ward 3) from Section 4.5.9 B-2 Neighborhood Business District to Section 5.4.10 B-3 Community Business District.
 - B. Appeal of City's interpretation of a "front setback" as it relates to site design and of the request to place a "propane filling station" as an accessory structure in the front setback or in the parking lot as proposed at 3706 Hardy Street by University Mall, LLC., property owner.

III. Other Business

IV. Adjournment

**MINUTES OF THE
REGULAR MEETING OF THE
HATTIESBURG PLANNING COMMISSION**

August 3rd, 2022

The Hattiesburg Planning Commission did meet in a regular session on August 3rd, 2022, at 1:01p.m. at the Jackie Dole Community Center, 220 West Front Street, Hattiesburg, Mississippi. Mark Miller, Chair, presided over the meeting (via GoToMeeting). Due to the ongoing COVID-19 pandemic, CDC-recommended social distancing guidelines were observed. Staff utilized GoToMeeting, an online meeting, desktop sharing, and telephone/video conferencing platform to give Commissioners, petitioners, and the public the option to participate remotely. A quorum was indicated and the attendance was as follows:

Commissioners Present: Dick Conville
Amy Hinton, Vice-Chair
Luke McNair (via GoToMeeting)
Mark Miller, Chair (via GoToMeeting)
Rhoda A. Pickett
Rebekah Ray
Carlos Wilson

Commissioners Absent: Charles Dawe
Michael Dickerson
Elayne Lockett
Jeff Keyseear

Also Present: Ginger M. Lowrey, AICP, Planning Div. Manager
Ann Jones, Chief Administrative Officer
Wiley Quinn, Interim Director of Urban Development
Jim Gladden, Esq.
Nathan Satcher, Planner
Larran Pickett, Planning Div. Office Manager
Betsy Mercier, Assistant to the Mayor

AGENDA REVIEW

There came the matter of the August Agenda. A request was made by Chair Miller for a motion to approve the July 2022 Agenda. A motion to approve was made by Commissioner Hinton and seconded by Commissioner Pickett.

Commissioners voting aye: Dick Conville
Amy Hinton, Vice-Chair
Luke McNair (via GoToMeeting)

Mark Miller, Chair
Rhoda A. Pickett
Rebekah Ray
Carlos Wilson

Commissioners voting nay: None

MINUTES REVIEW

There came the matter of the August 3rd, 2022 minutes. Rebekah Ray noted grammatical corrections and suggested noting discussion for the street renaming of “County Drive” to “Tommy King Drive.” Staff asked that Commissioner Ray provide the points of discussion left off in the minutes to staff in an email and they would be addressed. A motion was made by Commissioner Hinton to approve the minutes with minor grammatical changes and the additional points of discussion regarding the street renaming of “County Drive.” Commissioner Ray seconded the motion.

Commissioners voting aye: Dick Conville
Amy Hinton, Vice-Chair
Luke McNair (via GoToMeeting)
Mark Miller, Chair
Rhoda A. Pickett
Rebekah Ray
Carlos Wilson

Commissioners voting nay: None

REPORTS

BUILDING REPORT

Ginger Lowrey, Planning Division Manager, provided the Building Permit Report for July 2022 as the Building Official was not present. Staff emailed copies to the Commissioners before the meeting, and physical copies were provided to Commissioners who attended in person.

PLANNING REPORT

There came the matter of the Planning Report by Mrs. Lowrey, Planning Division Manager. On July 19, 2022, City Council upheld the rezone request filed by Andy Stetelman to rezone a property at 3207 Hardy Street from B-2, R-3 to B-3, the street renaming of “County

Drive” to “Tommy King Drive” was upheld, and the Conditional Use request filed by Quinby Chunn for horticultural use in B-5 zoning at 314 E 3rd Street was also upheld.

CHAIR’S REPORT

There came the matter of the Chair’s Report by Chair Mark Miller. Chair Miller noted that he was attending the Planning Commission meeting from Burlington, Vermont as he was attending the International Society for Quality-of-Life Studies Conference. He noted that Burlington was an international leader in emphasizing local foods, where local farms provide 7% of the City’s food and nearby community gardens are available for international refugees to use. He hoped that we could look at inspiring ideas such as these for our community.

INTRODUCTIONS

The Commissioners introduced themselves.

PUBLIC HEARING – PLANNING COMMISSION

There came the matter of Item A (Preliminary Plat Approval for Major Subdivision), filed by Akeelah Sartin, applicant, and Aurora Consulting Group, LLC., owner as required in the Land Development Code, Ord. No. 3209, for a major subdivision of properties located at the southeast corner of Barkley Road and Johnston St (Parcel 2-042D-26-012.00, PPIN 6739, and Parcel 2-042D-26-011.00, PPIN 6738, Forrest County, Ward 5).

	<u>Name</u>	<u>Address</u>	<u>City/State</u>
<u>Presented by:</u>	Akeelah Sartin	215 Mobile Street	Hattiesburg, MS 39401
	Donna Ali	215 Mobile Street	Hattiesburg, MS 39401
<u>Proponents:</u>	None		
<u>Opponents:</u>	None		

Akeelah Sartin, the applicant, and Donna Ali, of Aurora Consulting Group, presented the application. Sartin noted the request was for the addition of new single-family homes in this neighborhood and was representing the developer as the real estate agent. She noted that the size of each home would be between 1,300 and 1,700 ft² and they already have interested buyers in the homes but have not been marketing the homes yet. Donna Ali, the developer and owner of

the property, noted they have owned the property for over a decade and the lots are prime for development and improvements for the neighborhood and community.

Chair Miller then declared the public hearing portion of the meeting and opened the floor for questions and comments from commissioners. Commissioner Hinton noted that the subdivision seemed pretty straightforward and made a motion to approve the Preliminary Plat For Major Subdivision. The motion was seconded by Commissioner Conville. A roll call vote was then conducted.

Commissioners voting aye: Dick Conville
 Amy Hinton, Vice-Chair
 Luke McNair (via GoToMeeting)
 Mark Miller, Chair
 Rhoda A. Pickett
 Rebekah Ray
 Carlos Wilson

Commissioners voting nay: None

PUBLIC HEARING – PLANNING COMMISSION

There came the matter of Item B (Rezone Request), filed by Kenneth Moye, representative, and Amos Peters Jr., owner, as required in the Land Development Code, Ord. No. 3209, to change the zoning classification for undeveloped properties located at 5530 Old Hwy 42 (Parcel 2-029B-03-346.00, PPIN 18033; Parcel 2-029B-03-347.00, PPIN 18035; Parcel 2-029B-03-348.00, PPIN 18036; Parcel 2-029B-03-349.00, PPIN 15061, Forrest County, Ward 2) from Section 4.5.10 – B-3 Community Business District and Section 4.5.5 R-1C Single-Family Residential to Section 5.4.13 Light Industrial District I-1.

	<u>Name</u>	<u>Address</u>	<u>City/State</u>
<u>Presented by:</u>	Kenneth Moye	PO Box 8900	Moss Point, MS
	Amos Peters Jr.	164 Foster Road	Sumrall, MS

Proponents: None

Opponents: None

Before opening the public hearing portion of the meeting, Chair Miller asked for clarification on the surrounding zoning and use of the nearby I-1 Zoned Property that was mentioned in the staff report. Ginger Lowrey clarified that the nearby I-1 zoned parcels are currently vacant and undeveloped. Commissioner Conville asked for clarification on the flood

zone, and staff clarified that this property is within the AE-100 Flood zone with its proximity to the Bouie and Leaf River. Flood maps using data from FEMA were provided by staff, where a significant portion of this area is within a regulated flood zone. Lowrey also commented on the new regulations of the Flood Damage and Prevention Ordinance, noting the purpose of the ordinance was to “restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards.” Commissioner Pickett asked if anyone knew if this property was underwater during the 1974 Flood and it was uncertain by staff if it was. Commissioner Conville asked whether a zoning buffer would be required as the property directly abuts a single-family residential zoning neighborhood. Staff noted that the site plan provided by the applicant showed the required zoning buffer. Lowrey noted that a portion of the proposed development would be allowed by right for the B-3 zoning for the insurance office, pending meeting flood zone requirements. The tow yard portion of the development is the portion of development needing an I-1 Zoning, as that use is only allowed in industrial zones (I-1 and I-2). Lowrey also noted that building design standards do not apply to Industrially Zoned properties, where a B-3 zoned property would have to adhere to building design standards. Chair Miller then opened the public hearing portion of the meeting.

Kenneth Moyer, representative, Ken Moyer Land Design and Development, presented the application with the owner, Amos Peters Jr. Mr. Peters noted the rezone request was so that he could accommodate his business plans of a tow yard in the rear and an insurance office along the Highway 42 Frontage. Mr. Peters noted that he planned to be on a City Contract for towing rotations. Kenneth Moyer noted the front portion of the property would be in line with the surrounding area with a metal fabricated building and provided sample building concepts in a presentation. Moyer noted the required zoning buffer was shown on the site plan and that the majority of the surrounding area that the zoning buffer would be provided for is vacant, undeveloped single-family residential parcels. Mr. Moyer also noted surrounding uses that are similar to the proposed use within the Old Highway 42 corridor. He noted multiple establishments, such as SPE Auto Sales and Collision Center, Courtney’s Diesel Service, Ram Motor, and Custom Auto Creations (no addresses provided). He also noted there is a nearby industrial zone within 1 mile of the property, though not directly adjacent to the subject property.

Commissioner Hinton asked for clarification on a contract with the city for towing rotations. Mr. Peters confirmed that he did not have a contract, but was hoping that he could be

part of their rotations in the future. Commissioner Conville asked for clarification on the landscaping requirements and zoning buffer. He shared his concerns about adding industrial zoning in an area adjacent to residentially zoned properties and asked if commissioners or staff were aware of this precedence had been set with any other property. Nathan Satcher noted a recent case where variance was allowed for an industrial development to encroach on a residential zoning buffer requirement with heavier landscaping but was not the same precedence as a rezoning. Chair Miller noted that there are no active industrial zonings nearby as this is a fairly dramatic change and is concerned with setting a precedence.

Commissioner Pickett asked for clarification on the I-1 property nearby on the north side of Gussie Street on when it was rezoned and what its current use is. Ginger Lowrey referenced the minutes from the July 21, 1992 meeting and noted the nearby I-1 property is currently vacant and undeveloped at this time. Commissioner Conville asked if there were any active residential properties on the Mobile St side of the rezone. Wiley Quinn stated there were no properties on Mobile Street. Nathan Satcher stated he spoke with the property owners on Gussie St, informing them of the rezone request and public hearing and noted they did not provide any comments or concerns at that time. Commissioner Conville noted that we have a long tradition of protecting neighborhoods and while the zoning suggests there is a neighborhood near the proposed rezone, it is sparsely populated. He noted that poorer neighborhoods have been taken advantage of for decades, and centuries and does not want to perpetuate that by sticking an I-1 next to a neighborhood. Conville noted that while there are people nearby that may not care, the Planning Commission is charged with caring and this decision is a dilemma for him.

Commissioner Wilson stated that he lives in Ward 2 and lives close by to this proposed development. He appreciated the commentary by other commissioners and noted that few developers are choosing this side of town to build. He stated that flood zones in the area make it very difficult to build and that if someone is willing to bring their business into this area and provide a family with an income, it would seem to be a positive move for the City. Chair Miller appreciated the remarks by Wilson and noted that he sees Hattiesburg's Planning Commission as being business-friendly. He noted his personal view toward economic development is to encourage sustainable business growth through good planning and trying to maintain good zoning in that we are creating zones that are appropriate and sustainable for businesses to thrive in. Carlos Wilson made a motion to approve the request based on item II (The character of the neighborhood has

changed substantially so that rezoning is clearly justified and there is a public need for the rezoning.) Commissioner Conville clarified the justification that the neighborhood has changed substantially, noting that there has been a drastic change in this area, as the area has become “hollowed out” since the 1970s and ’80s and should be an argument for facilitating some business at this location and appears to be consistent with what is nearby this location.

Chair Miller again reemphasized that he views this as a very radical change and wanted it recorded in the minutes that Commissioner Conville views this rezone request as an unusual and distinctive situation such that it would be difficult to make this a precedence for other places. Vice-Chair Hinton agreed with Chair Miller. She noted this junction, however, is not conducive to any residential development if looking at what is already on this corridor. She mirrored some of Commissioners Wilson's sentiments in that allowing this to be developed may be better than allowing it to remain vacant. A roll call vote was then conducted.

Commissioners voting aye: Dick Conville
Amy Hinton, Vice-Chair
Luke McNair (via GoToMeeting)
Rhoda A. Pickett
Rebekah Ray
Carlos Wilson

Commissioners voting nay: Mark Miller, Chair

PUBLIC HEARING – PLANNING COMMISSION

There came the matter of Item C (Conditional Use for Cannabis Dispensary), filed by Ryan Bennett, applicant, Julie Mitchell, agent, and Brandon Parker, Representative, as required in the Land Development Code, Ord. No. 3209, to request Planning Commission approval for a “Cannabis Dispensary” adjacent to a residentially zoned property located at 6335 US HWY 49, Suite 40 (Parcel 2-028G-05-059.00, PPIN 14815, Forrest County, Ward 2).

	<u>Name</u>	<u>Address</u>	<u>City/State</u>
<u>Presented by:</u>	Philip Chapman	213 Draperon Dr, Ste A.	Ridgeland, MS
	Ryan Bennett	2211 42 nd Street	Meridian, MS
<u>Proponents:</u>	None		
<u>Opponents:</u>	None		

Philip Chapman, attorney of the applicant, presented the application. He noted the applicant, Ryan Bennett, is converting his current vape business, Rev, into a cannabis dispensary and is before the Planning Commission solely because the property is directly adjacent to a

residentially zoned property. He noted that his client had already submitted an odor prevention plan and many of the products are packaged in smell-proof containers and should contain odors. The building will also be fitted with industry standard for odor prevention. Mr. Chapman noted the suite is approximately 100 ft from the nearest residential structure. He also noted the applicant has already received a license from the Department of Health, where the state has approved this location to operate as a medical cannabis dispensary.

Chair Miller asked for a general idea of the business model and how many clients they would anticipate in a city like Hattiesburg with the state restrictions. Ryan Bennett, applicant, noted they are anticipating 60-80 patients a day but anticipate the first 6 months to be slower. Commissioner Ray asked for clarification on the security of the facility where Bennett reassured her that the facility would feel like “Fort Knox” and that the most important part of their business is their people and not necessarily their products. He noted there would be multiple layers of security.

Chair Miller then declared the public hearing portion of the request closed. He noted that where he is currently attending a conference in Vermont that they have approved medical cannabis and did not notice any significant presence of such businesses in their downtown. Commissioner Ray noted that a lot is weighing on the precedence set today with how they vote. Commissioner Conville made a motion to approve and was seconded by Commissioner Wilson. Commissioner Conville noted that the criteria for a conditional use have been met by the applicant and a roll call vote was then taken.

Commissioners voting aye: Dick Conville
Amy Hinton, Vice-Chair
Luke McNair (via GoToMeeting)
Mark Miller, Chair
Rhoda A. Pickett
Carlos Wilson

Commissioners voting nay: Rebekah Ray

PUBLIC HEARING – PLANNING COMMISSION

There came the matter of Item D (Rezone Request), filed by Cory Ferraez, representative, as required in the Land Development Code, Ord. No. 3209, to change the zoning classification for a property located at 105 & 106 Redus Street (Parcel 2-029C-04-166.00, PPIN 25952; Parcel 2-029C-04-165.00, PPIN 25953, Forrest County, Ward 2) from Section 4.5.12 Regional Business District B-5 to Section 5.4.13 Light

Industrial District I-1.

	<u>Name</u>	<u>Address</u>	<u>City/State</u>
<u>Presented by:</u>	Cory Ferraez	6152 HWY 98 W	Hattiesburg, MS
<u>Proponents:</u>	None		
<u>Opponents:</u>	None		

Cory Ferraez, representative of FerrCann Inc., presented the application. He noted this location will be for a combination of a transportation and cultivation facility and will house their corporate office in the front building. The larger warehouse on site will serve as a Tier II Micro-cultivation facility. He noted this size is considered very small and is akin to a homebrew operation as a comparison using beer. He believes this zoning is justified as the area has clearly changed. He noted the property is directly adjacent to industrial zoning and on a dead-end street with fencing already in place. He noted that FerrCann would like to also acquire the property directly to the South of the property, were that location to become available to them. He noted that Peter Stokes, with Stok'd Genetics, was there in the audience with him and would oversee operations of the facility. The cultivation facility would be self-contained and filtered appropriately and the odor prevention plan was included in their application. He also reiterated the state requirements for waste and that would be regulated by state-approved disposal companies. There were no plans for signage for this facility as the applicant did not want the general public to know that the facility was there.

Chair Miller then declared the public hearing portion of the request closed. Commissioner Conville noted that this is another case where there does not appear to be a good fit between the criteria and the action required by the Planning Commission because of the ordinance approved by the Planning Commission and City Council where cultivation facilities are only allowed in Industrial Zonings. He noted that there have been no significant changes in this area in the 44 years that he has lived in Hattiesburg. Commissioner Hinton noted that this area is not within a residentially zoned district and there are likely no plans to add any additional residential zones in this area given the heavy businesses in this area and is not conducive to lighter commercial zones. Chair Miller noted that the points by Hinton and Conville were well taken. Chair Miller noted that the public need for this zoning change has stemmed from the recent passing of laws pertaining to cannabis and there is a need for this to occur somewhere in the City. Commissioner Hinton made

a motion to approve based on Item II (The character of the neighborhood has changed substantially so that rezoning is clearly justified and there is a public need for the rezoning) and was seconded by Commissioner Wilson. A roll call vote was then conducted.

Commissioners voting aye: Dick Conville
Amy Hinton, Vice-Chair
Mark Miller, Chair
Rhoda A. Pickett
Carlos Wilson

Commissioners voting nay: None

Commissioners abstaining: Rebekah Ray

PUBLIC HEARING – PLANNING COMMISSION

There came the matter of Item E (Conditional Use For Cannabis Dispensary), filed by Cory Ferraez, representative, as required in the Land Development Code, Ord. No. 3209, to change the zoning classification for a property located at 105 & 106 Redus Street (Parcel 2-029C-04-166.00, PPIN 25952; Parcel 2-029C-04-165.00, PPIN 25953, Forrest County, Ward 2) from Section 4.5.12 Regional Business District B-5 to Section 5.4.13 Light Industrial District I-1. Before the meeting, staff received a letter of opposition to the conditional use request by email and presented the letter to the planning commission and the applicant. The letter will be included in the minutes.

	<u>Name</u>	<u>Address</u>	<u>City/State</u>
<u>Presented by:</u>	Cory Ferraez	6152 HWY 98 W	Hattiesburg, MS

Proponents: None

Opponents: None

Cory Ferraez, representative, presented the application. He stated the property was previously used as a car dealership and provided a more detailed plan showing the proposed site plan and floor plan for the dispensary. He clarified that there were no site changes proposed for the dispensary at this time. Ferraez addressed the letter of opposition, stating that state law will not allow for the consumption of cannabis on site and will need to be done in private and reiterated the security measures he and his company would take for the dispensary, where they would have a security system. Ferraez stated they would not anticipate having a full maturation of their business until 2024 and are projecting much fewer than 60 patients initially. The property, while adjacent to Twin Oaks, is surrounded by a 6ft fence around the portion of the property that abuts

the apartment complex with no direct access. He noted the significant landscape barrier in place with the mature trees, where visibility of the apartment complex from the proposed dispensary site is limited. Ferraez also shared that in his research, cannabis dispensaries in residential areas reduce crime and that tobacco and liquor stores may cause more crime than cannabis dispensaries. He also shared that in his research he believed that dispensaries increase nearby commercial property values. Ferraez referenced the letter of opposition again and stated that the letter was provided by a property manager and not a property owner or resident and did not provide enough information as to why they were objecting to their application. He asked that the commission view their proposal as a medical clinic and not as a drug dealer as medical cannabis dispensaries are allowed by state law.

Commissioner Ray asked for clarification of the research and studies that Ferraez used and he clarified that they came from a variety of sources, including academic journals and reputable news sources. Chair Miller then declared the public hearing portion of the petition closed. Commissioner Hinton made a motion to approve the Conditional Use for Cannabis Dispensary and the motion was seconded by Commissioner Wilson. Chair Miller wanted to note that the commission has heard the concerns of the person who submitted the letter of opposition and appreciated the feedback of the community. A roll call vote was then conducted.

Commissioners voting aye: Dick Conville
Amy Hinton, Vice-Chair
Mark Miller, Chair
Rhoda A. Pickett
Carlos Wilson

Commissioners voting nay: None

Commissioners abstaining: Rebekah Ray

BUSINESS MEETING

The appeal of the City's interpretation of a "front setback" as it relates to site design and of the request to place a "propane filling station" as an accessory structure in the front setback or in the parking lot as proposed at 3706 Hardy Street by Ron Farris, representative, and Eric "Poncho" James, owner. Ginger Lowrey presented the appeal to the Planning Commissioners. She clarified the rules of an appeal, which allows citizens to appeal the director's/staff's interpretation

of the City's Code, and noted the appeal was stemming from a request to redevelop the former Corner Market location in Midtown along S 37th Ave. Ginger Lowrey provided a detailed email from the appellant on why they were seeking an appeal. She also provided detailed information from the Land Development Code supporting the staff's interpretation of the code. That email has been provided as an attachment to these minutes. Ginger Lowrey reminded commissioners that this appeal is part of the business meeting portion for the Planning Commission and no public comments are required for Planning Commission to decide, but could allow for the appellant to speak if the Commission so desired. James Gladden clarified that the appeal made by the applicant has been well documented and Planning Commission's role is to review the decision made by staff. He stated that the information needed to make a decision has been provided to the Planning Commission and it is at their discretion if they wish to hear from Mr. Farris for any additional information. Chair Miller polled the commissioners asking if anyone needed to hear from Mr. Farris to help make their decision. Chair Miller stated that since there were no calls from commissioners for a public hearing regarding this matter, he called for a motion to be made. Commissioner Wilson made a motion to uphold the director's interpretation of the code and the motion was seconded by Commissioner Pickett. A roll call vote was then conducted.

Commissioners voting aye: Dick Conville
 Amy Hinton, Vice-Chair
 Mark Miller, Chair
 Rhoda A. Pickett
 Rebekah Ray
 Carlos Wilson

Commissioners voting nay: None

Having no further business, Commissioner Ray made a motion to adjourn. The motion was seconded by Commissioner Hinton and the public meeting was adjourned at 3:37 PM.

Mark Miller, Chair

Ginger Lowrey, Planning Division Manager



**Planning Commission
Case Fact Sheet**

Name of Petitioner: Dennis Pierce, Owner

Address of Property:
4 Willow Pointe

Tax Parcel
051L-11-038.000

PPIN:
20292

Ward:
3

Request: **Zoning Change**

Purpose of Request: To consider an application to change the zoning classification for a property located at 4 Willow Pointe (Parcel 051L-11-038.000, PPIN 20292; Lamar County, Ward 3) from Section 4.5.9 B-2 Neighborhood Business District to Section 5.4.10 B-3 Community Business District.

Applicant Summary: See Attached
Applicable Regulations:

SECTION 4 Zoning Districts Established

4.5.9 B-2 Neighborhood Business District: The purpose of the B-2 District is to provide for retail and personal service uses in locations convenient to residential neighborhoods consistent with comprehensive planning policies. This district is consistent with the Neighborhood Business District in the Comprehensive Plan.

4.5.10 B-3 Community Business District: The purpose of the B-3 District is to provide for retail, personal service, and offices in locations with convenient access to the community consistent with comprehensive planning policies. This district is consistent with the Community Business District in the Comprehensive Plan.

SECTION 6 Dimensional Standards and Measurements

Table 6.1 Dimensional Standards

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			
A-1	130,680 / 100	1 per lot	-	25	-	15	25	35 feet or 3 stories	35%	-
A-2	43,560 / 100	1 per lot	-	25	-	15	25	35 feet or 3 stories	50%	-
R-1A	10,000/ 50	1 per lot	-	30	-	10	25	35 feet or 3 stories	50%	-
R-1B	7,500/ 50	1 per lot	-	25	-	10	25	35 feet or 3 stories	50%	-
R-1C	5,000/ 50	1 per lot	-	20	-	10	25	35 feet or 3 stories	50%	-
R-2	4,000/ 40	2 per lot	-	20	-	10	20	35 feet or 3 stories	50%	-
R-3	7,500/ 40	17 per acre	-	20	-	5	20	35 feet or 3 stories	50%	-

Present Zoning: The parcel is currently zoned B-2, Neighborhood Business

Present Use: Multi-tenant shopping center

Future Land Use: Regional Business and Neighborhood Center Mixed-Use District

Surrounding Zoning and Land Use:
 North: B-5 Regional Business / B-2 Neighborhood Business
 South: B-2 Neighborhood Business / R-2 Two family residential
 East: R-2 Two Family Residential
 West: B-5 Regional Businesses

Letters or Concerns stated: The Planning Division Office has not received any letters or other written communications relative to this case as of August 24, 2022.

History / Background: The petitioner met with staff to discuss rezoning the property to B-3 to expand the possible tenants for the shopping center. The petitioner currently has a potential medical cannabis tenant on standby to locate into one of the suites, pending the rezoning change.

Item: A
Dennis Pierce, Owner
Request for: **Zoning Change**

Option: Basis for approval (Zoning Change):

- I. There was a mistake in the original zoning
- II. The character of the neighborhood has changed substantially so that rezoning is clearly justified and there is a public need for the rezoning
- III. Annexation

SUBJECT PARCEL:

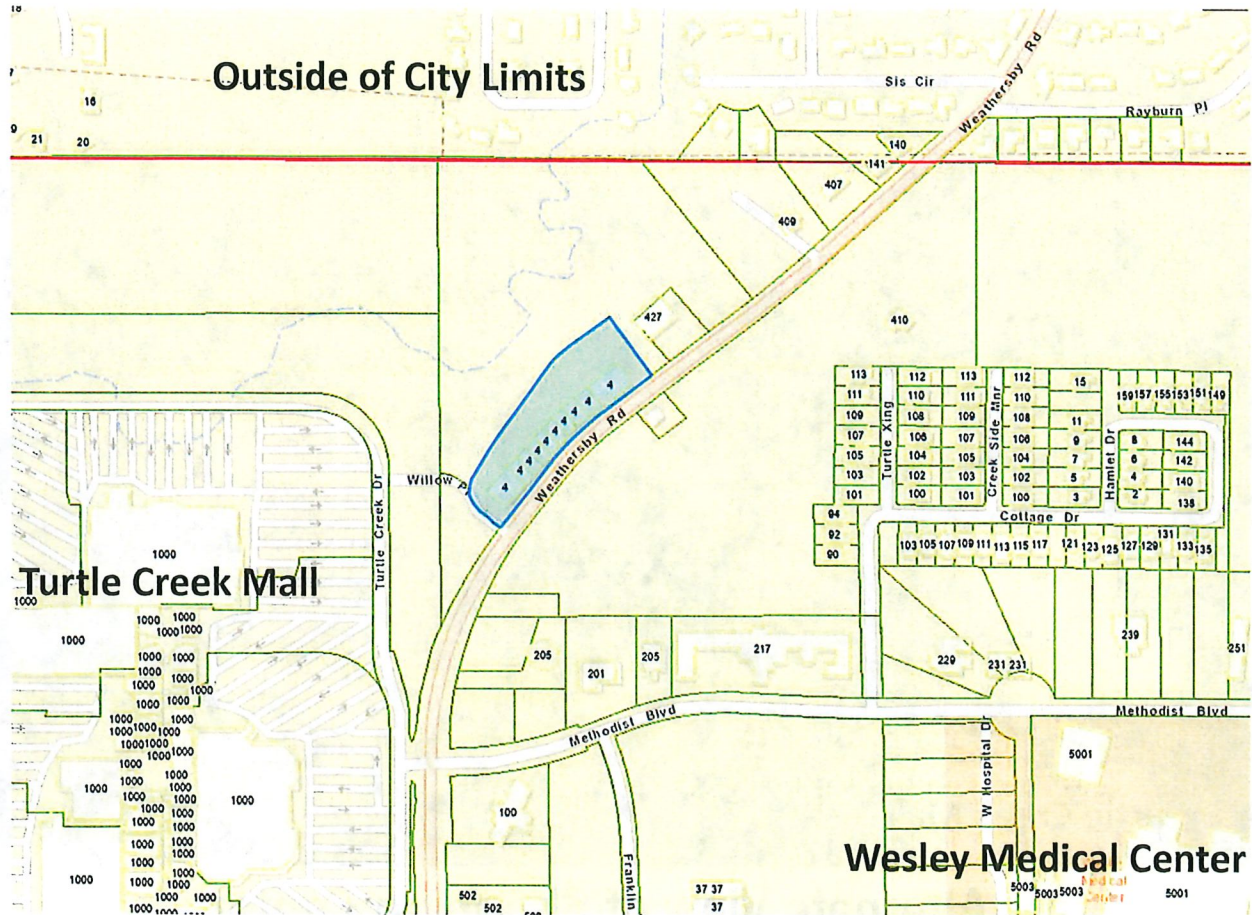
4 Willow Pointe

Dennis Pierce, Owner

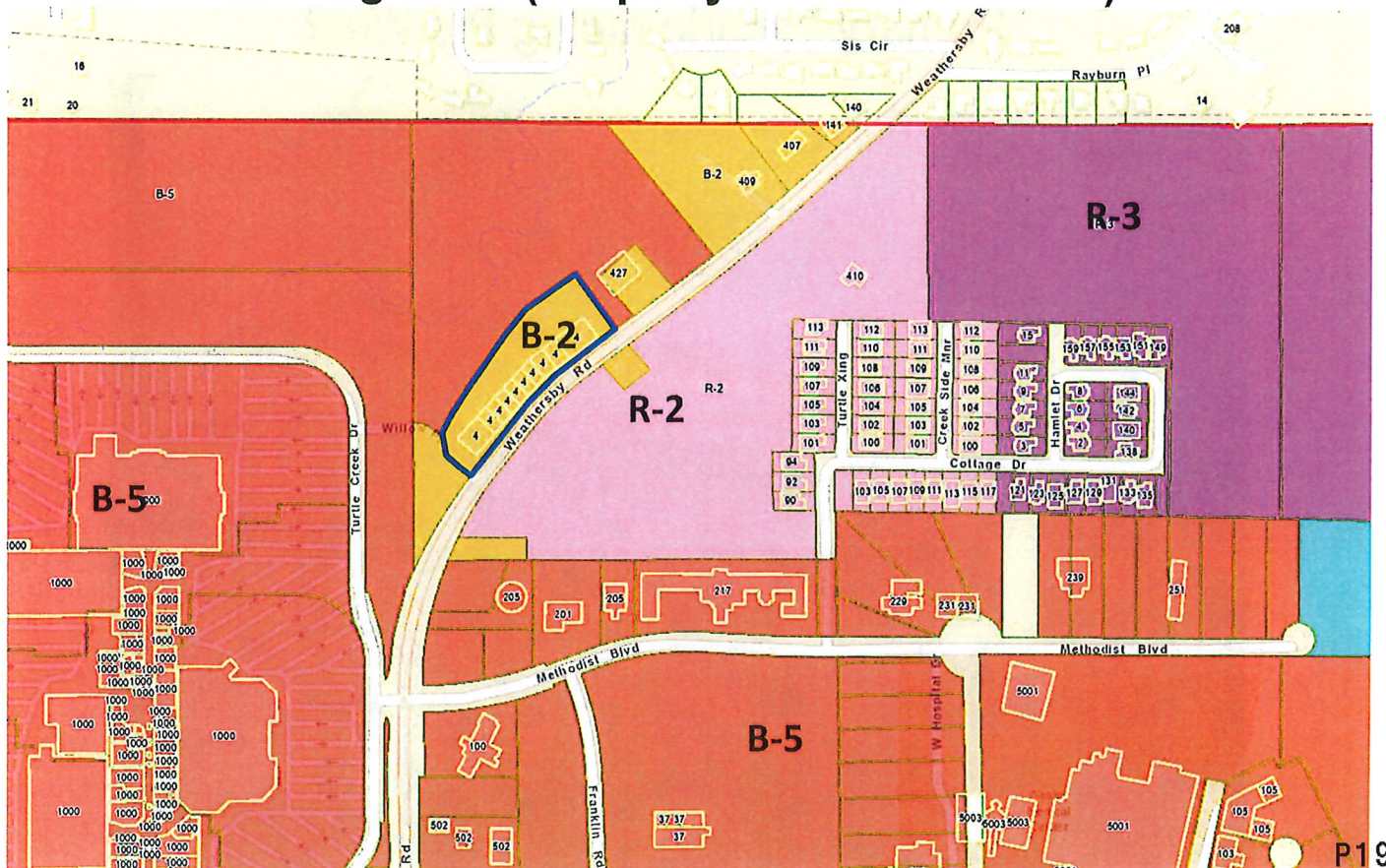
The petitioners request to consider an application to change the zoning classification for a property located at 4 Willow Pointe (Parcel 051L-11-038.000, PPIN 20292; Lamar County, Ward 3) from Section 4.5.9 B-2 Neighborhood Business District to Section 5.4.10 B-3 Community Business District.



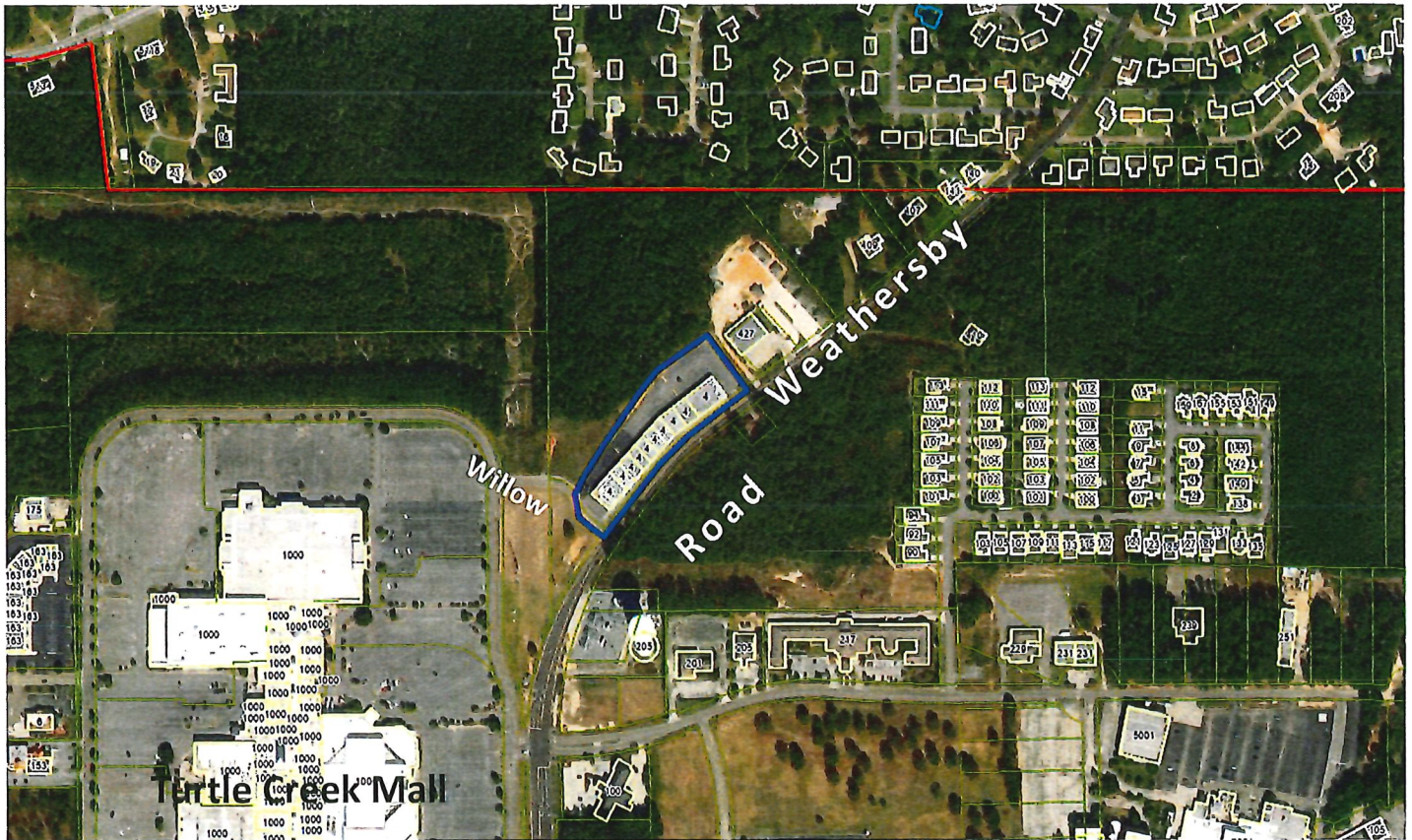
Vicinity Map—Ward 1



Zoning—B-2 (Property Outlined in Blue)



Site Aerial

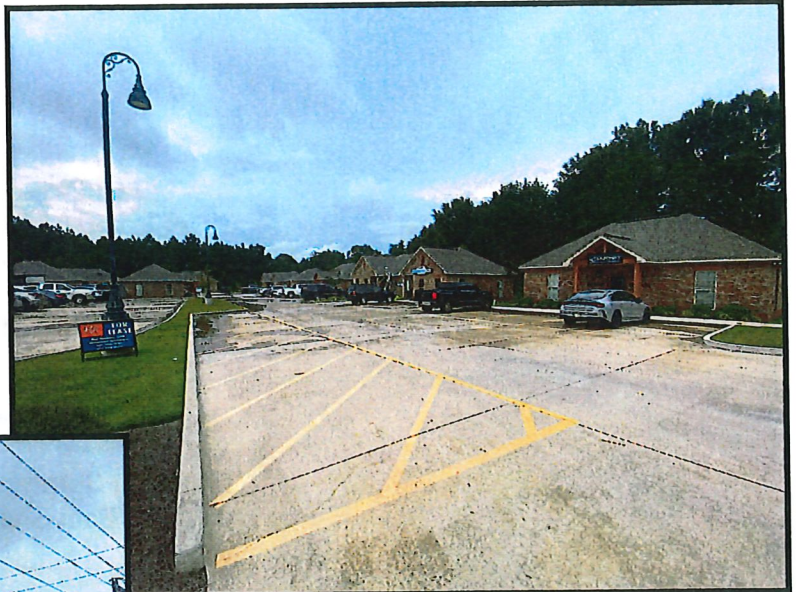


Alternate View of Shopping Center Primary Façade facing the West



SURROUNDING AREA

North: B-2 Neighborhood Business



**South: B-2 Neighborhood Business /
R-2 Two Family Residential
Vacant/Undeveloped**



**West: B-5 Regional Business
Turtle Creek Mall**



**East: R-2 Two Family Residential
Vacant / Undeveloped**





**Planning Commission
Case Fact Sheet**

Name of Petitioner:	University Mall, LLC., Owner		
Address of Property:	Tax Parcel	PPIN:	Ward:
3706 Hardy Street	2-028M-07-074.00	26449	3

Request:	Appeal
Purpose of Request:	Appeal of City's interpretation of a "front setback" as it relates to site design and of the request to place a "propane filling station" as an accessory structure in the front setback or in the parking lot as proposed at 3706 Hardy Street by University Mall, LLC., Owner
Applicant Summary:	See Attached
Applicable Regulations:	
SECTION 4	Zoning Districts Established

4.5.10 B-3 Community Business District: The purpose of the B-3 District is to provide for retail, personal service, and offices in locations with convenient access to the community consistent with comprehensive planning policies. This district is consistent with the Community Business District in the Comprehensive Plan.

SECTION 5	USE REGULATION AND CONDITIONS
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5.4.37.2 All proposed areas for outside display and storage shall be clearly marked on the site plan, including but not limited to, open displays of garden supplies, equipment, and other materials and any cargo containers, tractor trailers, storage buildings or similar structures used or intended to be used to contain materials for sale, maintenance, construction, etc. All outdoor storage of logs, lumber and building materials shall be kept at least 100 linear feet from any adjacent residential lot and shall be located in

a side or rear yard only.

SECTION 6

Dimensional Standards and Measurements

Table 6.1 Dimensional Standards

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			
A-1	130,680 / 100	1 per lot	-	25	-	15	25	35 feet or 3 stories	35%	-
A-2	43,560 / 100	1 per lot	-	25	-	15	25	35 feet or 3 stories	50%	-
R-1A	10,000/ 50	1 per lot	-	30	-	10	25	35 feet or 3 stories	50%	-
R-1B	7,500/ 50	1 per lot	-	25	-	10	25	35 feet or 3 stories	50%	-
R-1C	5,000/ 50	1 per lot	-	20	-	10	25	35 feet or 3 stories	50%	-
R-2	4,000/ 40	2 per lot	-	20	-	10	20	35 feet or 3 stories	50%	-
R-3	7,500/ 40	17 per acre	-	20	-	5	20	35 feet or 3 stories	50%	-

SECTION 7

STANDARDS OF DESIGN

7.9.10.4 Outside storage areas and waste containers shall be located to the side or rear of principal structures. Required in all Business Zones.

7.12.10.2 Outdoor storage of commercial equipment and materials and shall be kept at least 100 linear feet from any adjacent lot containing a legal, conforming residential use and shall be only located in a side or rear yard as an accessory to a principal use on the same lot or within 300 feet of the principal use.

SECTION 12

PROCESS AND PROCEDURES

12.4.2 Appeals. Appeals may be made from any order, requirement, decision, or determination made by the Director, the Site and Design Review Committee, the Historic Conservation Commission or the Planning Commission pertaining to this Code. An appeal may be taken by any person aggrieved by such order, requirement, decision or determination. An appeal shall be made within 10 days of the order, requirement, decision, or determination. An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer or board from whom the appeal is taken certifies to the appeals body that by reason of facts stated in the certificate a stay would, in their opinion, cause imminent peril to life and property. Appeals must be made in writing and shall specify the grounds for the appeal. All appeals shall be heard within 60 days of filing. The appeals body may reverse or affirm, in whole or in part or may modify the order, requirement, decision, or determination that is the subject of the appeal.

SECTION 13

DEFINITIONS

Accessory Structure: Any structure on the same lot with and customarily incidental and secondary to the main structure or use, including structures such as liquid petroleum gas storage tanks and ice vending machines.

Accessory Use: A use of land or building or portion thereof customarily incidental and subordinate to the principal use of the land or building and located on the same lot with such principal use.

Present Zoning:	The parcel is currently zoned B-2, Neighborhood Business
Present Use:	Multi-tenant shopping center
Future Land Use:	Neighborhood Conservation District 2 and Community Business Corridor
Surrounding Zoning and Land Use:	North: B-3 Community Business South: R-1A Single-Family Residential East: B-3 Community Business and B-1 Professional Business West: B-3 Community Business
Letters or Concerns stated:	The Planning Division Office has not received any letters or other written communications relative to this case as of August 29, 2022
History / Background:	The property owner met with staff in the Pre-Application meeting on June 9, 2022, to discuss a new tenant looking to occupy 3706

Hardy Street. Staff identified a conflict with the tenant's plans to construct an outdoor garden center facing S 37th Avenue as the location of the garden center would be in a front setback, which is not allowed in the current Land Development Code (LDC) Section 5.4.37.2, 7.9.10.4, and 7.12.10.2. The property owner was also proposing the addition of a "propane filling station" in the front setback or the parking lot, which staff also pointed out would not meet the requirement of the LDC. Following the Pre-Application meeting, Ron Farris, representative of the property owner, continued discussions by phone and email on the planning staff's interpretation of the code. Farris then filed a formal appeal of the staff's interpretation of a front setback and the placement of a propane filling station in a front setback or parking lot. Ron Farris emailed staff his appeal of the interpretation of the Land Development Code and is included in this report as Exhibit A.

Staff placed the appeal on the Planning Commission's agenda as a business meeting item on the August agenda. During Planning Commission's meeting, the item was reviewed under the business meeting portion, as legal counsel noted that the Land Development Code does not require a public hearing for the appeal. Planning staff presented the appeal to the Planning Commission and the motion was made to uphold the City's Interpretation of the Code without the need for additional information from the applicant at the time of the meeting.

Following the August Planning Commission meeting, Ron Farris appealed the decision of the Planning Commission. Additional documentation for the appeal of HPC's decision was provided by Farris after the August HPC meeting and is noted as Exhibit B in this report. Appeals of the Planning Commission would normally go directly to City Council, however, City Administration asked that the appeal be heard in a public hearing setting with Planning Commission before moving on to City Council to ensure full extent of due process on this matter.

The Commission should consider the appeal of the staff interpretation of the Land Development Code only.

Option: **Uphold** City's Interpretation of the Code or
 Overturn the City's Interpretation of the Code

EXHIBIT A

COMMENTS: Forwarded email provided from Ron Farris, representative of University Mall, LLC., Owner, for the original appeal of staff's interpretation of "front setback" and the denial of the placement of a "propane filling station" in the front setback or parking lot. Additional information provided by Ginger Lowrey is included in its dissemination to the Hattiesburg Planning Commission.

Exhibit A includes conceptual plans provided by University Mall, LLC. during the initial Pre-Application meeting on June 9th.

Satcher, Nathaniel

From: Lowrey, Ginger
Sent: Tuesday, August 2, 2022 1:42 PM
To: Amy Hinton (amy.hinton@jcjc.edu); Carlos Wilson; Charles Dawe (charlesmdawe@gmail.com); Elayne Lockett; jeff.keysear@regions.com; Luke McNair; Mark Miller (m.m.miller@usm.edu); Michael G Dickerson; Rebekah Ray; Rhoda A. Pickett; Richard Conville
Cc: planning; Satcher, Nathaniel; Jones, Ann; Quinn, Wiley; James Gladden
Subject: FW: University Mall, LLC / Ace Hardware proposal
Attachments: City of Hat University Mall.pdf; Agenda HPC August 2022.pdf

Planning Commission,

This email is to provide additional information on Section III. Other Business Item A on August's agenda.

Please see the email below. Mr. Ron Farris has appealed the City's interpretation of "front setback" and the denial of the placement of a "propane filling station" in the front setback or parking lot. This email explains his appeal in detail. Mr. Farris's client, Mr. "Poncho" James, requested to place an outdoor storage facility within the front setback of 3706 Hardy St (former Corner Market) along S 37th Ave. However, outdoor storage is not permitted in front setbacks per 5.4.37.2, 7.9.10.4 and 7.12.10.2. He is also appealing our denial of the location of the propane station based on the following:

- > Accessory Structure: Any structure on the same lot with and customarily incidental and secondary to the main structure or use, including structures such as liquid petroleum gas storage tanks and ice vending machines.
- > Accessory Use: A use of land or building or portion thereof customarily incidental and subordinate to the principal use of the land or building and located on the same lot with such principal use.
- > If it is along S 37th Ave, it would be within the front setback, which is not permitted for accessory structures. However, the installation of a propane filling station in the parking lot of a retail location at all would not be construed as customarily incidental. The City has concerns about safety for cars and pedestrians, traffic flow, and related site design. This review is based on sketches provided with the pre-application.

Per LDC 12.4.2 (below) determinations made by the Director (or myself, the designee) are made to the Planning Commission. This will be heard by the HPC in the business meeting portion of the meeting. It is not a public hearing and it is up to discretion of the HPC who they hear from. The appeal was initiated after the review of the attached pre-application meeting.

LDC Section 12.4.2 Appeals. Appeals may be made from any order, requirement, decision, or determination made by the Director, the Site and Design Review Committee, the Historic Conservation Commission or the Planning Commission pertaining to this Code. An appeal may be taken by any person aggrieved by such order, requirement, decision or determination. An appeal shall be made within 10 days of the order, requirement, decision, or determination. An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer or board from whom the appeal is taken certifies to the appeals body that by reason of facts stated in the certificate a stay would, in their opinion, cause imminent peril to life and property. Appeals

must be made in writing and shall specify the grounds for the appeal. All appeals shall be heard within 60 days of filing. The appeals body may reverse or affirm, in whole or in part, or may modify the order, requirement, decision, or determination that is the subject of the appeal.

Ginger Maddox Lowrey, AICP, CFM
Planning Division Manager
City of Hattiesburg
(Office) 601-545-4599

From: Ron Farris <ron@farrislawgroup.net>
Sent: Wednesday, June 22, 2022 5:51 PM
To: Lowrey, Ginger <glowrey@hattiesburgms.com>
Subject: University Mall, LLC / Ace Hardware proposal

Good afternoon Ginger:

Thank you and Nathan again for speaking with me today concerning the Ace Hardware project submitted for preliminary review by University Mall, LLC.

Based upon our conversation, my understanding is that the City of Hattiesburg Urban Development Department staff is objecting to approval of the proposal whereby Ace Hardware would install a garden center alongside the east wall of our existing building adjacent to South 37th Avenue. Based upon our conversation, staff's objections are based upon three (3) sections of the Land Development Code, being 5.4.37.2, 7.9.10.4 and 7.12.10.2. Here is a summary of my understanding of the staff's position on each:

5.4.37.2 states: "All proposed areas for outside display and storage shall be clearly marked on the site plan, including but not limited to, open displays of garden supplies, equipment, and other materials and any cargo containers, tractor trailers, storage buildings or similar structures used or intended to be used to contain materials for sale, maintenance, construction, etc. All outdoor storage of logs, lumber and building materials shall be kept at least 100 linear feet from any adjacent residential lot and shall be located in a side or rear yard only."

Staff considers the proposed garden center to constitute a "proposed area for outside display and storage" for purposes of this section, and we agree. I read this section to only require such areas to be clearly marked on the site plan. You indicated that staff interprets this section to require our garden center to be located at least 100 linear feet from any adjacent residential lot and location in a side or rear yard only, whereas I read the 100 linear feet setback and side or rear yard only prohibitions to apply only to "outdoor storage of logs, lumber and building materials," which our proposal does not involve.

7.9.10.4 states: "Outside storage areas and waste containers shall be located to the side or rear of principal structures."

Staff is interpreting this provision to prohibit construction of the proposed garden center on the east side of our building because your staff considers the east end of our building, facing South 37th Avenue (the wall with no windows, no door and only a wall mural at present) to be a "front" of the property rather than the "side" of

the principal structure. Were this wall of our building to be the "side" of the principal structure for purposes of the LDC, this section would not preclude the proposed garden center.

7.12.10.2 states: "Outdoor storage of commercial equipment and materials and shall be kept at least 100 linear feet from any adjacent lot containing a legal, conforming residential use and shall be only located in a side or rear yard as an accessory to a principal use on the same lot or within 300 feet of the principal use."

Staff considers the proposed garden center to involve "outdoor storage of commercial materials," which requires that they must be kept at least 100 linear feet from any adjacent lot containing a legal, conforming residential use and to be located only in a side or rear yard as an accessory to a principal use on the same lot or within 300 feet of the principal use.

For purposes of staff's interpretations of all of these sections, staff is assuming that the University Mall, LLC parcel is a "corner parcel" with "frontage" on Hardy Street and South 37th Avenue, and this conclusion leads staff to classify the east wall of our principal structure, facing South 37th Avenue, as "frontage" which disqualifies it for classification as a "side yard" for purposes of satisfying the requirements in any or all of the sections cited above.

Following our lengthy discussion, I understand that staff is relying upon the definitions of "frontage" on p. 159 of the LDC and "Lot, Double Frontage" on p. 161. The definition of "frontage" is as follows: "That distance where a property line is common with a street right-of-way line." The definition of "Lot, Double Frontage" is as follows: "A lot, other than a corner lot which has frontage on more than one street. Also referred to as a through lot."

During our discussions, in responding to my questions concerning why staff considers the wall of our principal structure and the land lying between that wall and the west ROW of South 37th Avenue to be a "front" wall rather than the "side" of the building, you referred several times to the fact that staff considers the University Mall, LLC parcel to be a "corner parcel." The LDC defines "corner parcel" as follows (p. 161): "A lot or parcel of land abutting upon two or more streets at their intersection, or upon two parts of the same street forming an interior angle of less than 135 degrees." I pointed out that given the fact that the LDC specifically distinguishes a "double frontage" lot from a "corner Parcel" lot, and that the University Mall, LLC parcel is, in fact, a double frontage lot. I further noted that there is a corner lot at the intersection of Hardy Street and South. 37th Avenue, but that is not the University Mall, LLC parcel. I further pointed out that the reference to "frontage" in the definition of "double frontage lot" is a reference to "frontage" as that term is defined on p. 159 of the LDC, meaning the *distance* of the common line between our property line and the ROW. By the definition as it is written, the University Mall, LLC parcel has some number of feet of "frontage" on Hardy Street and a certain amount of "frontage" on South 37th Avenue.

What I do not find in the LDC is any term, definition or section that justifies your interpretation that a principal structure with "frontage" on two (2) public streets actually has two "fronts" rather than a "front," two (2) "sides" and a "rear." so that a building such as ours on a lot abutting a public street cannot, by your interpretation, have any "side" of that building facing a public street for purposes of meeting the requirements of Sections 5.4.37.2, 7.9.10.4 or 7.12.10.2. This, I understand, is the sole basis for staff's interpretation of Sections 5.4.37.2, 7.9.10.4 or 7.12.10.2 as prohibiting the proposed garden center location abutting the east wall of our existing principal structure.

With respect, we disagree with your interpretation of the LDC and your classification of the eastern side of our building as the "front" of our building for purposes of applying the LDC to the proposed garden center. We

believe the LDC, and particularly Section 7.9.10.4, permits location of the proposed garden center abutting the eastern side wall of our principal structure outright. We believe our proposed garden center will fully comply with Section 5.4.37.2 if we clearly mark on our proposed site plan the proposed areas for outside display and storage, and that the lack of any logs, lumber or building materials in our proposed garden center never brings the 100 linear feet setback from residential areas or the side yard restrictions in this section into play. We respectfully disagree with the staff's interpretation of the words "commercial equipment and materials" in Section 7.12.10.2 to include retail products held for resale in an outdoor garden center such as we propose. Unfortunately, the terms "commercial," "commercial equipment" and "commercial materials" are not defined in the LDC. Section 7.12.10.2, like all of Section 7, pertains to parking requirements and specifically applies to "Business zones," but we read section 7.12.10.1 to say that the use requirements in Section 5, and particularly Section 5.4.37.2, control with regard to outside display and storage, where "open displays of garden supplies" such as we propose are specifically addressed.

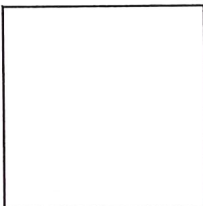
For these reasons, we intend to appeal the staff's interpretations as we understand them, at the earliest possible opportunity.

During our visit, no mention was made of the second part of our proposal which pertains to Ace Hardware's propane filling station, proposed to be located within the parking lot in front of the principal building. If staff has any objection to this proposal under the LDC, we wish to have a clear understanding of the staff's basis for any objection, and it would be our intent to appeal that at the same time we appeal the staff's interpretations referenced above relating to the garden center.

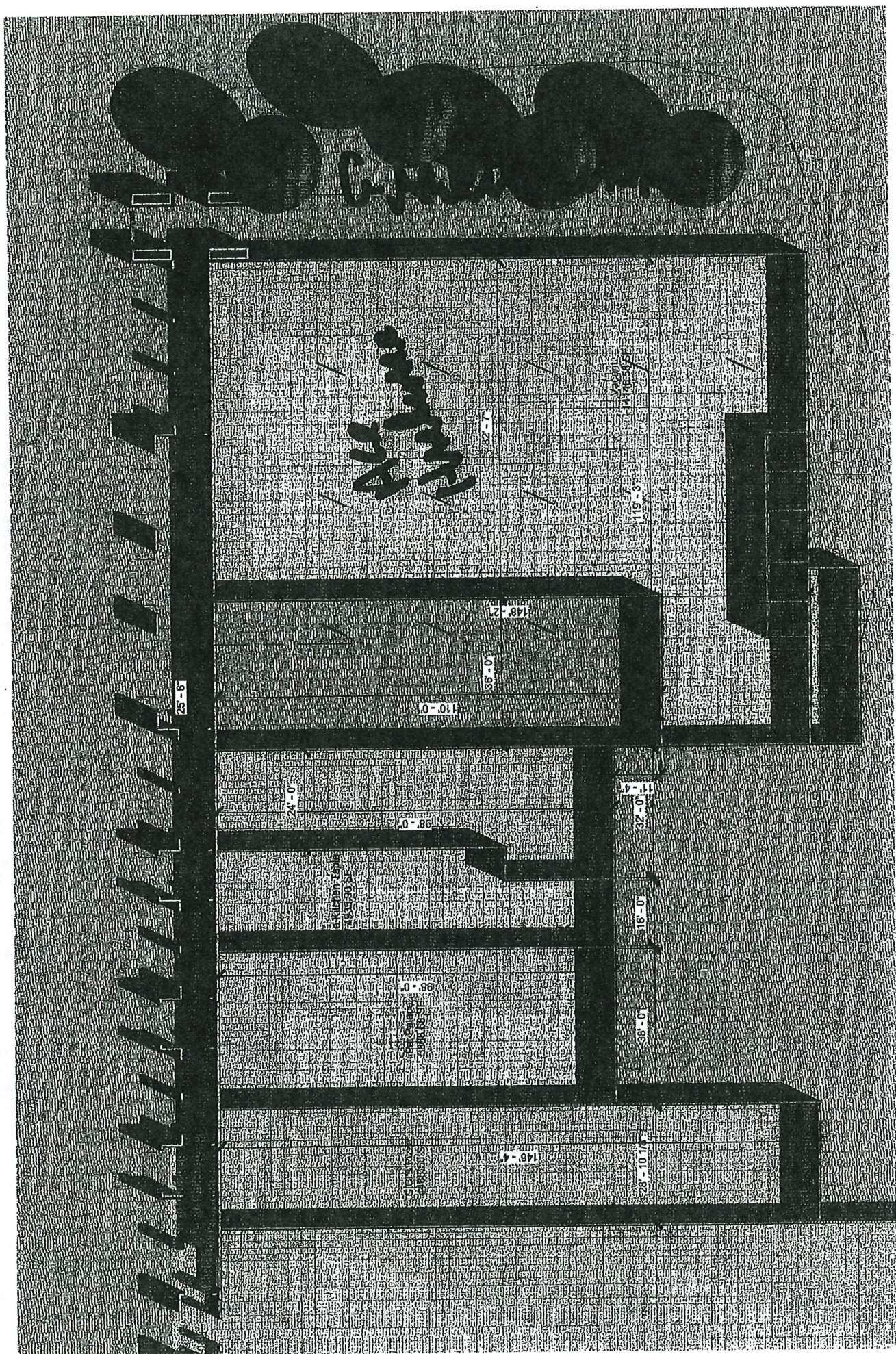
Please let me know as soon as possible the staff's preliminary comments relating to the proposed propane filling station included in our application for preliminary staff review.

Respectfully,

Ron Farris, on behalf of University Mall, LLC.

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Ronald D. Farris, Esquire
 Post Office Box 1458
 Madison, MS 39130-1458
 601.354.1458
ron@farrislawgroup.net





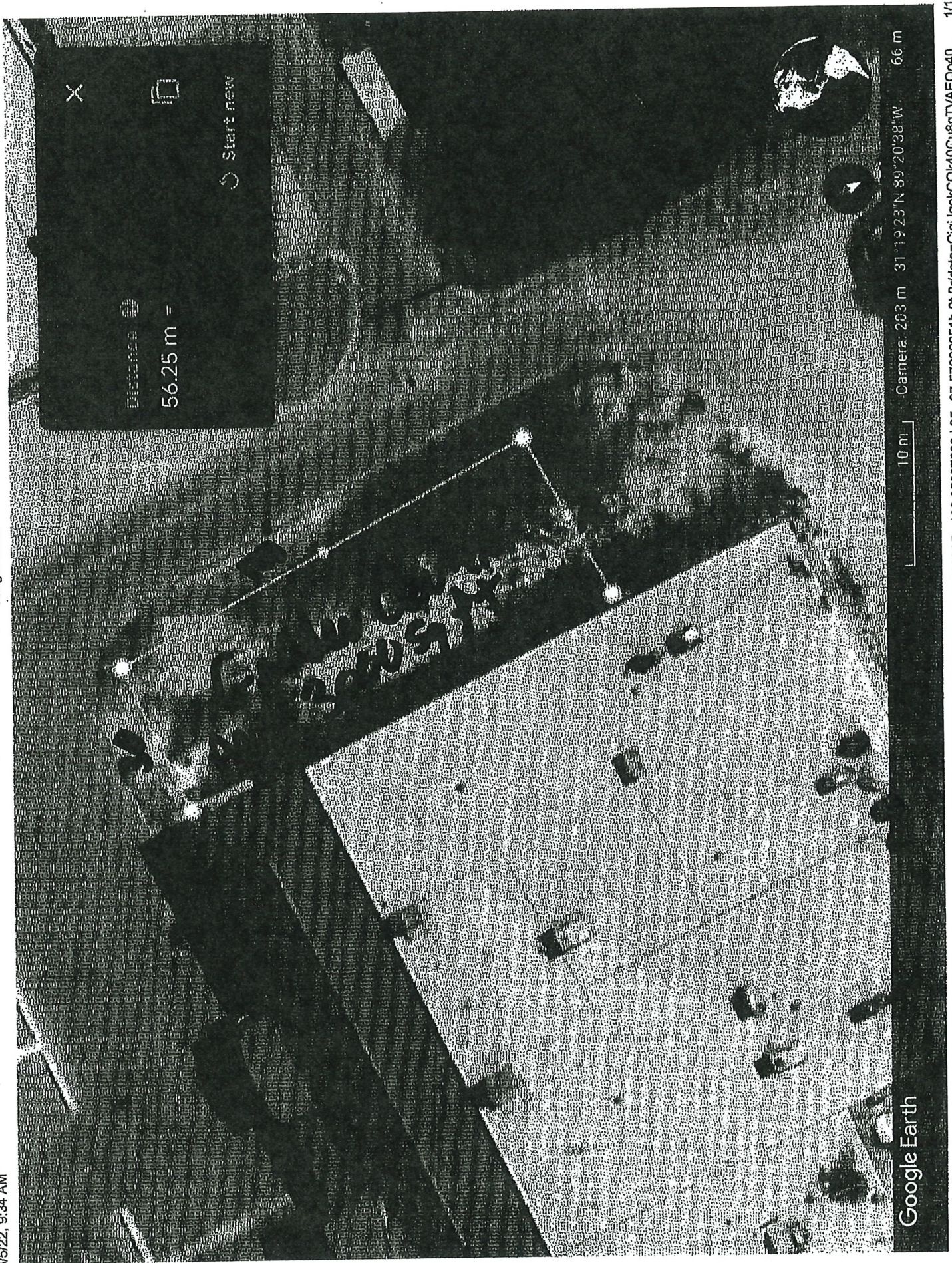
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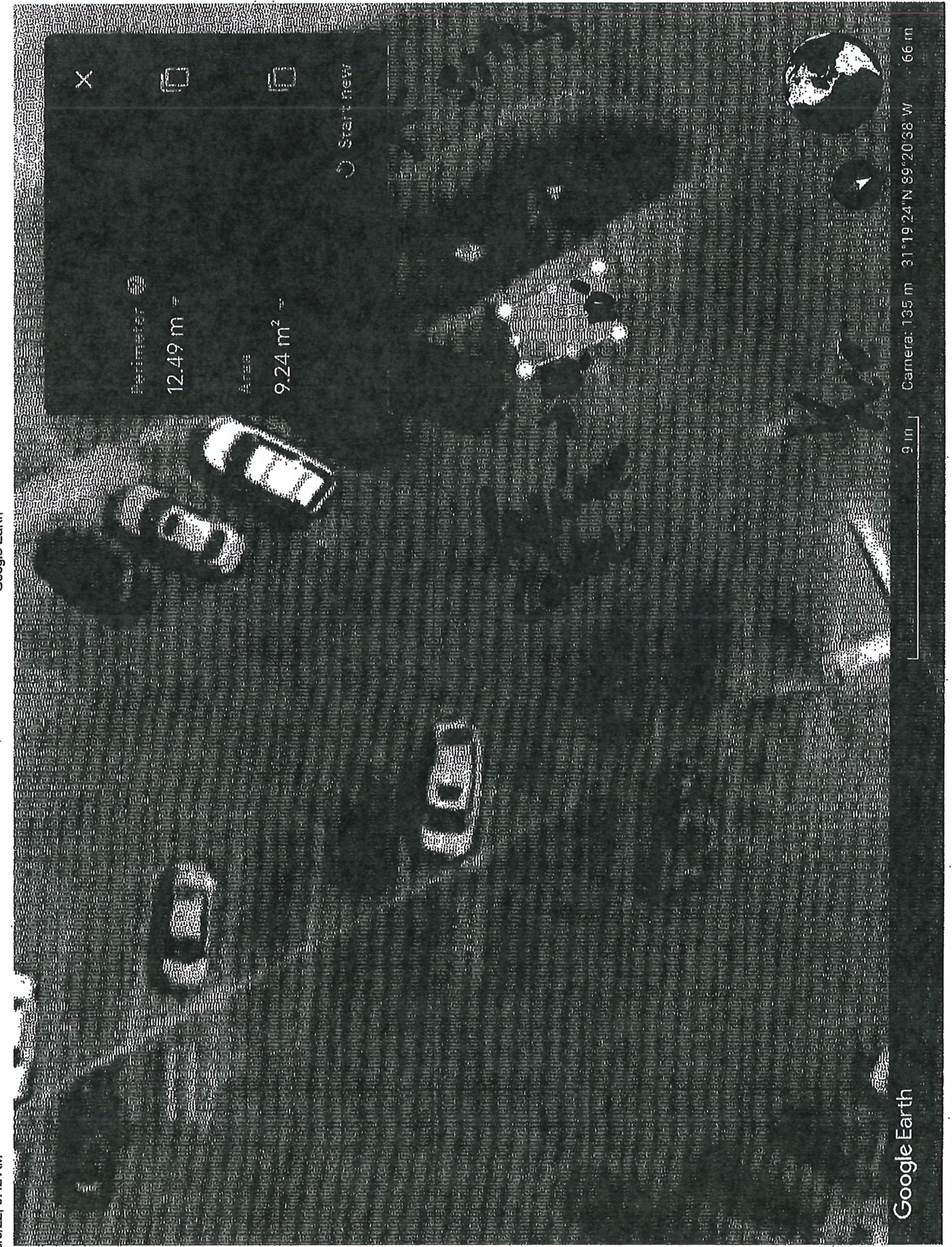
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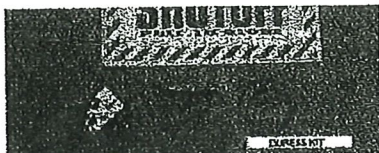
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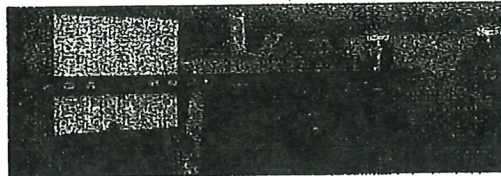
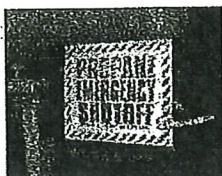
Google Earth







A3209TL - Thermal latch

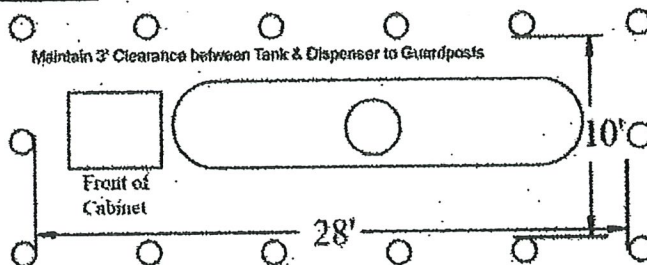


DURESS Kit - Shown installed with customer provided Unistrut and PE pipe handle.

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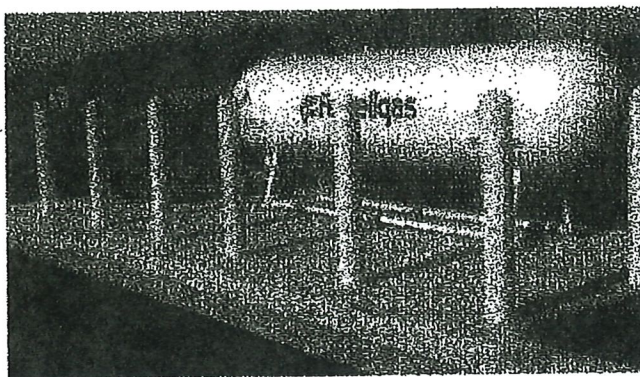
GEC - Dedicated to delivering knowledge and technology to maximize your people, operations, and profitability.

Crash Protection



Position crash post to allow 10' x 28' inside footprint. Number of crash posts show is for visual impact only and may vary; contact your local AHJ for your regulatory requirements.

The photos below show a 1,000 WG tank, tank legs, and large dispenser cabinet. It does not depict your specific installation. The cabinet can be mounted facing away from the head of the tank or turned to either side and mounted with the modular tank leg system. If turning you may be required to use additional pipe fittings to bring the piping into the rear of the cabinet to the pump suction.



For more information on GEC dispensing units visit our Dispenser Catalog page at:

<http://www.gasequipment.com/gases/dispenser.html>

For more information on Cylinder Filling Dispensing units please visit this link:

http://www.gasequipment.com/pdfs/OrderingGuide_CylinderDispensers.pdf

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Pump System Pre-Startup Commissioning Checklist

Date: _____ Pumpset Serial No.: _____
 Location: _____ Bypass Valve Model No./Serial No.: _____
 Installation Company: _____ Installer's Name: _____



EXHIBIT B

COMMENTS: Supplemental filing with the appeal of Planning Commission's Decision provided by Ron Farris on behalf of University Mall, LLC., Owner. Documentation, including photographs and other graphics, was provided to staff on Saturday, August 13, 2022, at 10:11 AM by email.

This document, with the photographs accompanying this filing, supplements the notice of appeal previously filed on Friday, August 5, 2022.

This appeal is filed on the following grounds:

1. The appellant, University Mall, LLC, was denied due process during the appeal hearing conducted by the city of Hattiesburg planning commission on Wednesday, August 3, 2022.
2. The following procedural errors deprived the appellant, University Mall, LLC, a due process appeal hearing before the Planning Commission on Wednesday, August 3, 2022:
 - a. The appellant and its legal counsel were denied the opportunity to speak during the appeal hearing.
 - b. The appellant and its legal counsel were denied the opportunity to introduce any documentary evidence or other matters in support of appellant's case during the appeal hearing.
 - c. The appellant was denied an opportunity to respond to the arguments presented by the City staff during its appeal hearing.
 - d. The appellant and its legal counsel were denied the opportunity to ask any questions of the chairman of the proceeding during the appeal hearing.
 - e. The appellant and its legal counsel were denied the opportunity to challenge the statements of the hearing panel's legal counsel relating to the foregoing procedural deficiencies during the appeal hearing.
 - f. The legal counsel to the Planning Commission addressed all procedural questions raised by Planning Commission members during the hearing without resort to or based upon any written procedural rules.
 - g. The legal counsel to the Planning Commission evidenced bias against the appellant in advising the Planning Commission to deprive appellant the opportunity to speak, the opportunity to present argument, and the opportunity to present evidence in support of appellant's position.
 - h. The Chairman of the Planning Commission evidenced bias toward appellant during the hearing by refusing to permit appellant to speak or present evidence in support of its case, choosing instead to prohibit appellant from making any argument whatsoever or asking any questions about the procedural aspects of the hearing.
 - i. Both in the pre-hearing agenda and during the appeal hearing, City staff erroneously presented the appeal by University Mall LLC as having been filed by "Ronald Harris" [SIC] and "Eric Poncho" [SIC] instead of the proper party (University Mall, LLC), and when asked for clarification during the hearing reiterated that the appeal was being filed by Ron Farris as an individual rather than on behalf of the applicant, University Mall, LLC. This created confusion which deprived the appellant of proper consideration of its case.
 - j. During the hearing, City staff repeatedly misrepresented the nature of University Mall, LLC's application as one for outdoor storage rather than a retail garden center.

- k. Both City staff and legal counsel to the planning commission incorrectly advised the Planning Commission that a record had been created at the pre-application hearing level when, in fact, the pre-application meeting was terminated by City staff without being concluded, despite University Mall, LLC's request for same, and no record was made to serve as the basis for an appeal.
 - l. City staff unilaterally selected correspondence from appellant to provide to the Planning Commission prior to the appeal hearing instead of affording any opportunity to appellant to make any written or documentary submission to the Planning Commission prior to the appeal hearing.
 - m. City staff unilaterally and secretly (without notice or copy to appellant or its designated legal counsel) communicated with members of the Planning Commission concerning the appellant's case prior to the appeal hearing.
 - n. Neither City staff nor legal counsel provided notice of any due process procedural rules for the appeal hearing before or during the appeal hearing.
 - o. The City and the codes, ordinances and regulations of the City lack any duly adopted written due process protocol for conduct of an appeal of an administrative interpretation of the City's development codes and failed to provide notice of due process protocols to appellant in this instance.
3. Appeal is taken from the staff's interpretation of the City's Land Development Code (February 21, 2017, as updated September 8, 2020) ("LDC") as it relates to front setback requirements and other provisions in the LDC relating to a proposed garden center and propane filling station for a proposed Ace Hardware retail store to be located in appellant's building (Midtown Market shopping center, 3720 Hardy Street), as follows:

Appellant disputes Staff's interpretation as it relates to a proposed garden center for the Midtown Market building at 3720 Hardy Street.

Appellant disputes Staff's interpretation as it relates to a proposed propane fueling station for the Midtown Market building at that same address.

Both proposals are related to a proposed new tenant for the building, being Ace Hardware. Ace Hardware is nationally ranked as one of the nation's top three (3) home improvement stores, along with Lowe's, Home Depot and others. In May of this year, J. D. Power conducted their 2022 U.S. Home Improvement Retailer Satisfaction Study and ranked Ace Hardware as highest in customer satisfaction among home improvement retailers for the 15th time in 16 years, ranking them ahead of Lowe's, Home Depot and all other nationally ranked home improvement stores. Once they open, this exciting new corporate citizen of Hattiesburg would bring upwards of 35 new full-time jobs to the City, plus at least that many construction jobs, and result in more than a half million dollars of investment in new capital improvements in the aging heart of the Hardy Street corridor. This development squarely fits the vision for redevelopment of community business districts described in the zoning classification for Commercial Business Districts in the LDC, and would specifically achieve the LDC's goal of expanding retail offerings to the neighborhood, and the City as a whole, by bringing a national-gold standard home improvement store into the Midtown neighborhood, which it desperately needs.

If Ace Hardware locates its first store in Hattiesburg, it wants to place this new expanded concept store in Midtown Market, making it one of the largest Ace Hardware stores in the state and region. Ace has publicly stated its intent to make this its flagship, or top of their line, store. By Ace Hardware's business model, the garden center and the propane filling station, are key profit centers for their operation and key components of this store. This is a prime retail development opportunity for the City of Hattiesburg and, with the winds of recession in the air, it may be one of only a handful of opportunities on this scale that this City will see in the near future.

First, we will address the proposed propane filling station. Based on renderings from Ace Hardware provided to the City (see exhibits filed with this appeal, incorporated herein by reference), this is an attractive, unobtrusive structure that will blend easily into this vast parking lot and be virtually invisible from Hardy Street and the entirety of the Midtown Market property except for those who are directly in front of the Ace Hardware store at the east end of the building. It is completely safe, meeting exceeding all applicable federal and state regulations.

We agree with Staff that a propane filling station is an "accessory use" under Section 5.4.2.

Section 5.4.2.1 requires that this use must be a permitted use within B-3. There is nothing in the Table of Uses for B-3 that indicates this would not be a permitted use if its location complies with the Code.

The staff bases their objection on two interpretations of the Code. The first is that the location would be within the front setback. The Staff cites no section of the Code stating such a prohibition. We find in the Code Section 5.4.2.3, which states that "Accessory uses and structures that are clearly related to and incidental to the permitted use or structure on the lot are permitted in all districts."

Section 5.4.2.4 only requires that accessory uses require the issuance of a certificate of zoning compliance.

THERE IS NO OTHER PROVISION OF THE CODE CITED BY STAFF IN OBJECTING TO THIS PROPOSED PROPANE STATION.

The Staff stated in their email to James Gladden dated July 8 that "The City has concerns about safety for cars and pedestrians, traffic flow and related site design." We are fully willing to cooperate as we work through those in the site plan review process. We believe we can resolve those issues with everyone making an effort, but **there is nothing in the LDC that prohibits the location of this propane filling station in proximity to this retail store so long as it is designed properly.**

The staff is objecting to approval of the proposal whereby Ace Hardware would install a garden center alongside the east wall of our existing building adjacent to South 37th Avenue. Based upon our one substantive conversation, staff's objections are based upon three (3) sections of the Land Development Code, being 5.4.37.2, 7.9.10.4 and 7.12.10.2. We address these three (3) sections in successive order:

A.

5.4.37.2 states: "All proposed areas for **outside display** and storage shall be **clearly marked on the site plan**, including but not limited to, **open displays of garden supplies**, equipment, and other materials and any cargo containers, tractor trailers, storage buildings or similar structures used or intended to be used to contain materials for sale, maintenance, construction, etc. *All outdoor storage of logs, lumber and building materials shall be kept at least 100 linear feet from any adjacent residential lot and shall be located in a side or rear yard only.*"

Staff considers the proposed garden center to constitute a "proposed area for outside display and storage" for purposes of this section, and **we agree** it is a **proposed area for outside display**. During the Planning Commission meeting on August 3, City staff repeatedly referred to the application as one for "outdoor storage" and made *no mention whatsoever* of this area being proposed for outside display of retail goods, which is its primary purpose. Reading this section as written, in such instances it only requires such areas to be **clearly marked on the site plan**. Staff indicated that they interpret this section to require our garden center to be located at least 100 linear feet from any adjacent residential lot and location in a side or rear yard only. BUT THIS IS NOT WHAT THE CODE SAYS. Reading it verbatim, it says that the 100 linear feet setback and side or rear yard only prohibitions to apply only to "outdoor storage of logs, lumber and building materials," which our proposal does not involve. This, I believe, respectfully, is an erroneous interpretation of the clear wording of 5.4.37.2.

B.

7.9.10.4 states: "Outside storage areas and waste containers shall be located to the **side or rear** of principal structures."

We agree that the large shopping center building that makes up Midtown Market is the principal structure for purposes of this section.

However, Staff is interpreting this provision to prohibit construction of the proposed garden center on the east side of our building because the staff considers the east end of our building, facing South 37th Avenue (the wall with no windows, no door and only a wall mural at present) to be a "front" of the property rather than the "side" of the principal structure. Were this wall of our building to be the "side" of the principal structure for purposes of the LDC, the proposed garden center would satisfy Section 7.9.10.4. It is the staff's interpretation of this area east of our building as the "front" or, technically and legally, another "front" of our principal structure that we believe, respectfully, is an erroneous interpretation of the Code.

C.

Finally, the Staff cites Section 7.12.10.2.

7.12.10.2 states: “Outdoor **storage of commercial equipment and materials** and shall be kept at least 100 linear feet from any adjacent lot containing a legal, conforming residential use and **shall be only located in a side or rear yard** as an accessory to a principal use on the same lot or within 300 feet of the principal use.”

Staff considers the proposed garden center to involve “outdoor storage of commercial materials,” which requires that they must be kept at least 100 linear feet from any adjacent lot containing a legal, conforming residential use and to be located only in a side or rear yard as an accessory to a principal use on the same lot or within 300 feet of the principal use. Again, Staff’s interpretation of the east end of our building facing South 37th Avenue to be a “front” of the property rather than the “side” is the issue. As with the previous Section, the location of the proposed garden center would meet the other requirements of this Section 7.12.10.2 IF this area is the “side” of our building and not the “front.”

As an aside, we question the Staff’s conclusion that Section 7.12.10.2, dealing with outdoor storage of commercial equipment and materials, brings this section into play at all. The term “outdoor storage” is not defined in the LDC and the reference to “outdoor storage” in Section 5.4.37.2, the first section the Staff relies upon, uses separate references to “outdoor display” and “outdoor storage,” implying that they are *separate concepts or separate things* for purposes of the LDC. We believe it is obvious that an outdoor garden center is more of a “display of items for sale” than it is “storage.” But, were we to concede for the sake of argument that Section 7.12.10.2 *could* apply, then the issue is still, very simply, whether this is the “side” or the “front” of our principal structure.

Accordingly, it seems that the only issue the staff has with our proposed garden center use or location is their interpretation of the code to require that they treat this area as the “front” and not the “side” of our building. If it is the “side,” then staff has no basis for any objection to this proposed garden center under the Code.

For purposes of staff’s interpretations of all of these sections, staff is assuming that the University Mall, LLC parcel is a “corner parcel” with “frontage” on Hardy Street and South 37th Avenue, and this conclusion leads staff to classify the east wall of our principal structure, facing South 37th Avenue, as “frontage” which disqualifies it for classification as a “side yard” for purposes of satisfying the requirements in any or all of the sections they are citing.

Ginger Lowrey, speaking for the Staff, informed us that they are relying upon the definitions of “frontage” on p. 159 of the LDC and “Lot, Double Frontage” on p. 161 of the 2020 version of the LDC.

The definition of “frontage” is as follows: “That **distance** where a property line is common with a street right-of-way line.”

The definition of “Lot, Double Frontage” is as follows: “A lot, other than a corner lot which has frontage on more than one street. Also referred to as a through lot.”

During our discussions, Ms. Lowrey referred several times to the fact that staff considers the University Mall, LLC parcel to be a “corner parcel.” This is an incorrect interpretation of the LDC based on the clear wording of the LDC itself.

The LDC defines “corner parcel” as follows (p. 161): “A lot or parcel of land abutting upon two or more streets at their intersection, or upon two parts of the same street forming an interior angle of less than 135 degrees.” However, the LDC specifically distinguishes a “double frontage” lot from a “corner Parcel” lot. The University Mall, LLC parcel is, in fact, a **double frontage lot**. It fits precisely the definition for “double frontage lot” I read from the LDC. We have attempted to explain to the Staff that there **is a corner lot** at the intersection of Hardy Street and South 37th Avenue, but **that is not the University Mall, LLC parcel**. We have further pointed out that the reference to “frontage” in the definition of “double frontage lot” is a reference to “frontage” as that term is defined on p. 159 of the LDC, meaning the *distance* of the common line between our property line and the ROW. By the definition as it is written, the University Mall, LLC parcel has some number of feet of “frontage” on Hardy Street and a certain amount of “frontage” on South 37th Avenue.

There is nothing anywhere in the LDC or elsewhere that says that having “frontage,” which speaks of a distance measurement, on a public street makes the portion of the structure facing that street the “front” of that building. Section 6.2.2 says that Corner Lots have two front setbacks and two side setbacks. But even if this were a Corner Lot, Section 6.2.2 permits the Director to 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.” P.60, LDC.

There is NO OTHER PROVISION in the LDC that says a lot with “double frontage” has, or may be interpreted to have, two fronts.

Natably, the LDC does contain a definition of “Lot Line, Front,” which states as follows, in relevant part (p. 161): “In the case of a corner or through lot [we have a through lot and not a corner lot], the line separating said lot from the street which the house will face, to be determined from the request for a building permit. Front lot line is synonymous with street right-of way line.” We do not believe that anyone can reasonably or credibly argue that the Midtown Market shopping center does not face Hardy Street and not South 37th Avenue, as it has since 1968.

Here It is also relevant to note that the City of Hattiesburg has recently approved iron fencing to run along So. 37th Ave. which, if the City’s position in this matter is correct, would not have

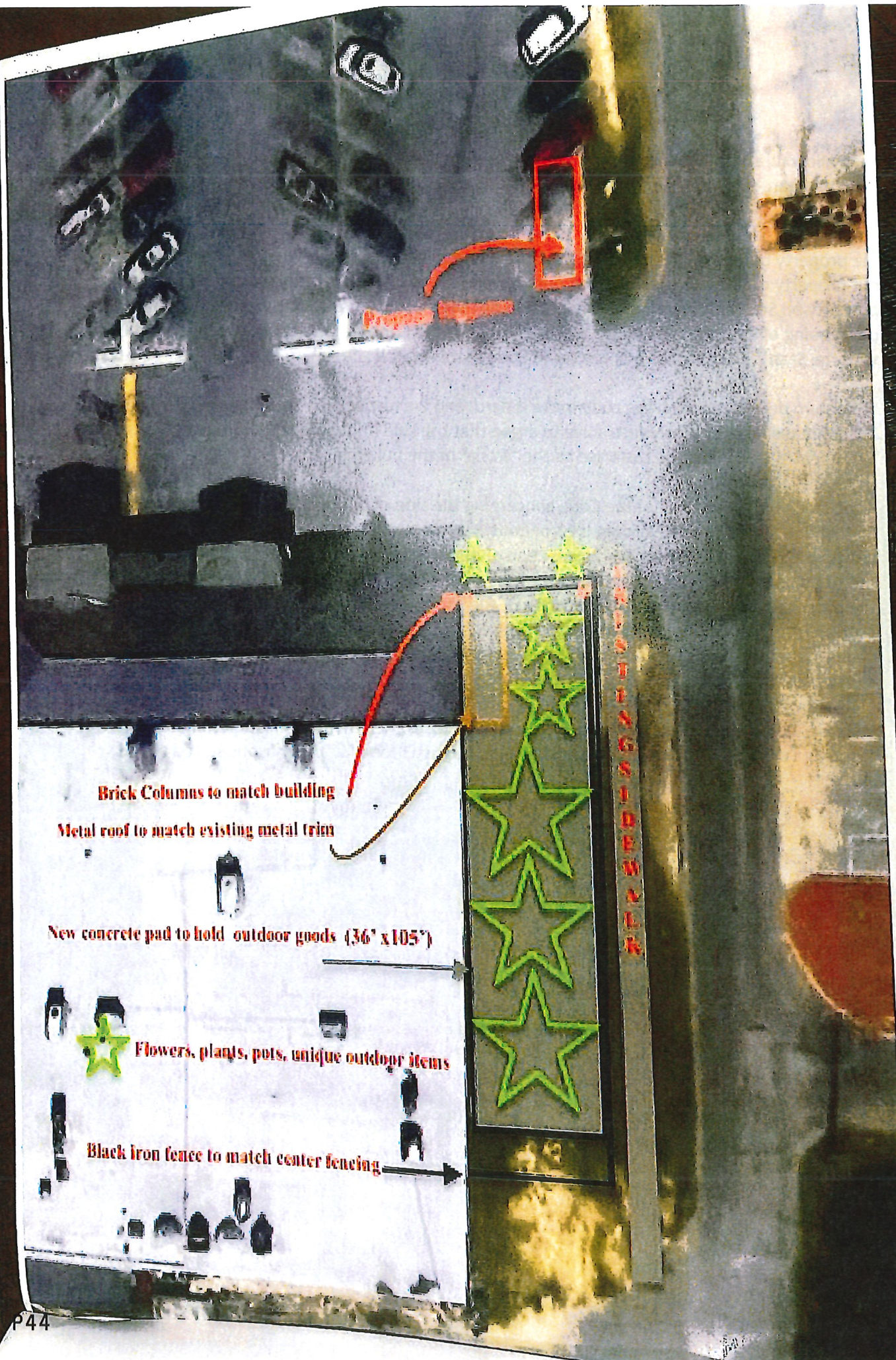
been allowable within the front setback. This fencing lies just a few feet from the area for the proposed garden center and propane filling station.

The LDC also contains a definition (p. 161) of "Lot line, side" which states: "The side lot line is the property boundary line between the front and rear lot lines." This would make the line of our property running the beginning of our property on Hardy Street to the rear line of our property on South 37th Avenue the "side" and not the "front" lot line. This is consistent with our reading of the other provisions and definitions in the Code, and it is wholly inconsistent with the Staff's interpretation of the same Code in this matter.

These two definitions from the code make it hard, and we respectfully submit, impossible or at best unreasonable or highly restrictive to argue that the side of our building bordering South 37th Avenue is or should be classified as the "front" of the building.

If the Staff's interpretation of the Code concerning the side of our building as constituting the "front" or a "front" of our building is erroneous, there is nothing in the LDC which prevents the location of the garden center on the east end of our building *so long as* it is clearly marked on the site plan. If this error is corrected, there is nothing in the LDC that prohibits the location of the proposed garden center in this location or the use this area has a garden center. There is nothing elsewhere in the Code, and nothing else that has been cited to us by City staff or legal counsel, that would otherwise prohibit this use of the property so long as the dimensional and development standards of the LDC are otherwise met.

We respectfully disagree with the staff's interpretation of the LDC in this instance and the Planning Commission's conduct of our appeal on August 3 for all of the reasons stated above.



Proposed structure

Brick Columns to match building

Metal roof to match existing metal trim

New concrete pad to hold outdoor goods (36' x 105')



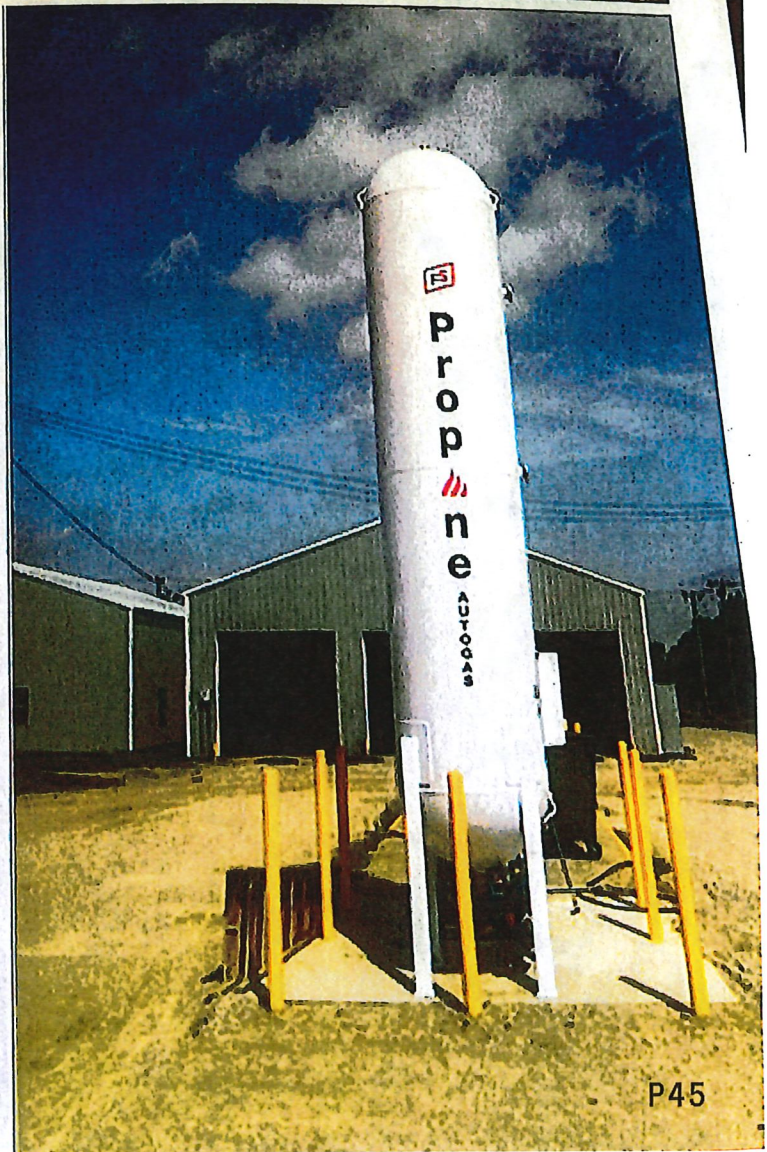
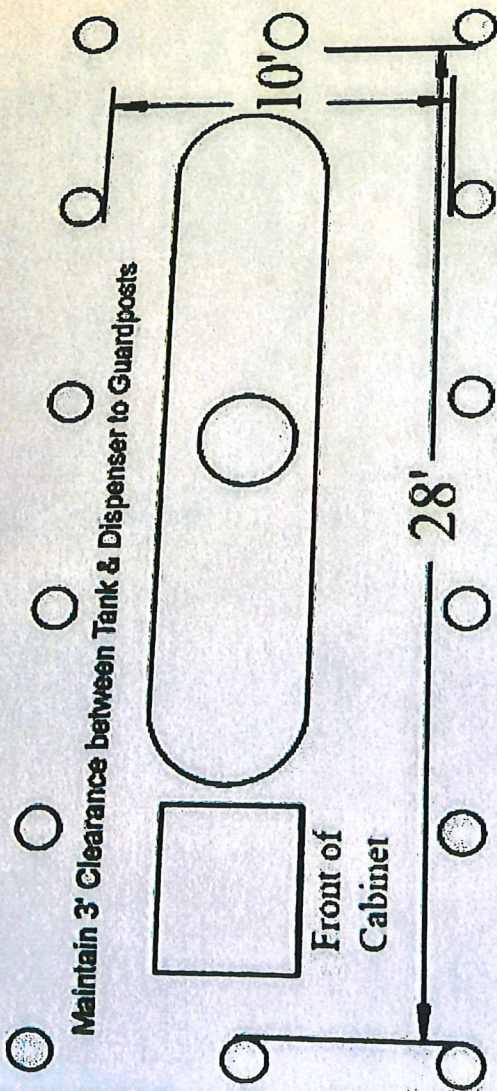
Flowers, plants, pots, unique outdoor items

Black iron fence to match center fencing

REAR SIDE WALK

GOING WITH A VERTICAL TANK WOULD CUT FOOTPRINT DOWN TO 10'X'16'

Sh Protection



Auto Sliding door with covered roof

Propane Dispenser

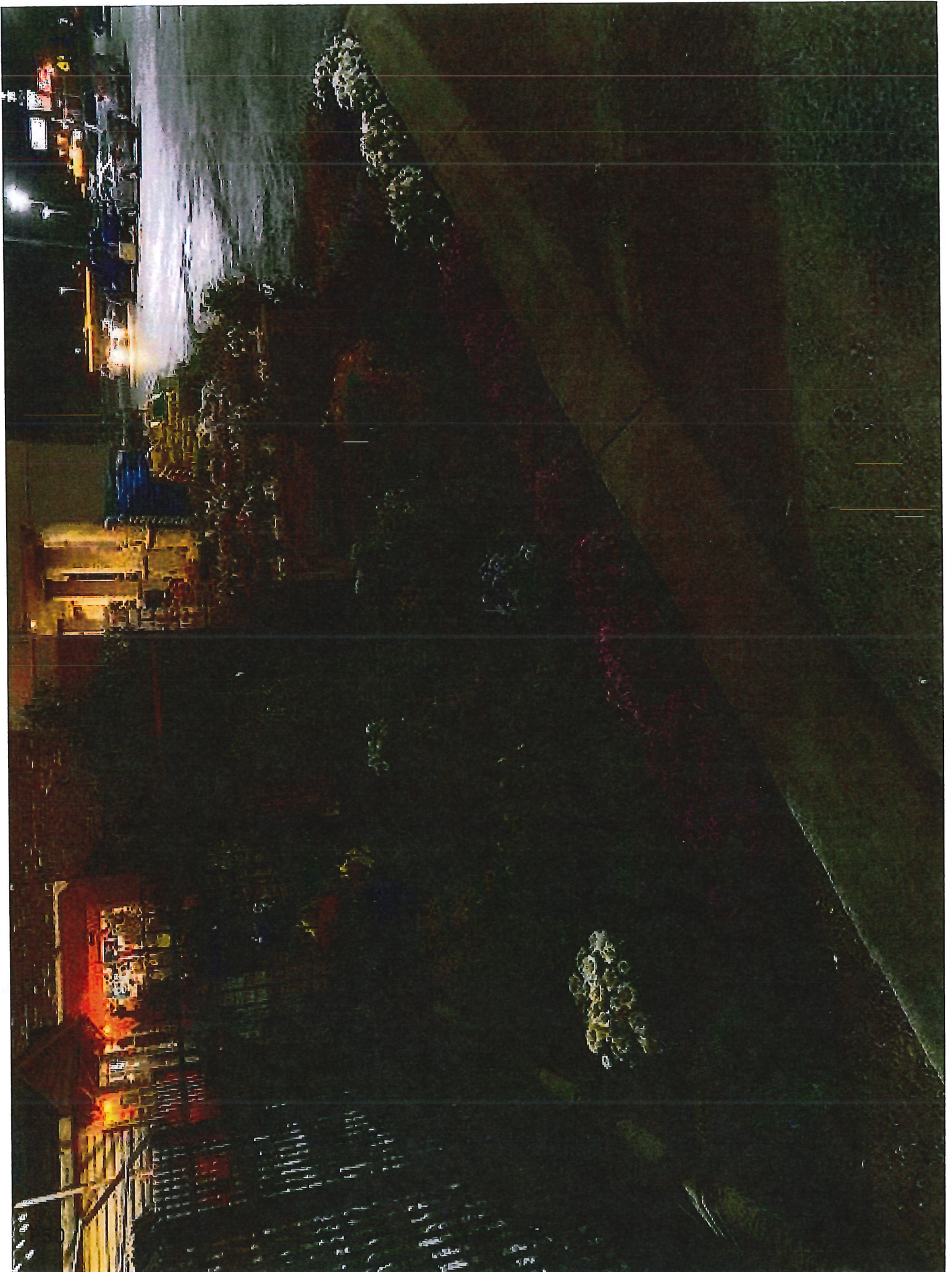
Concrete pad with flower racks, flower pots,
upscale outdoor furniture, unique outdoor items
& MORE FLOWERS

FENCE AREA









SUBJECT PARCEL:

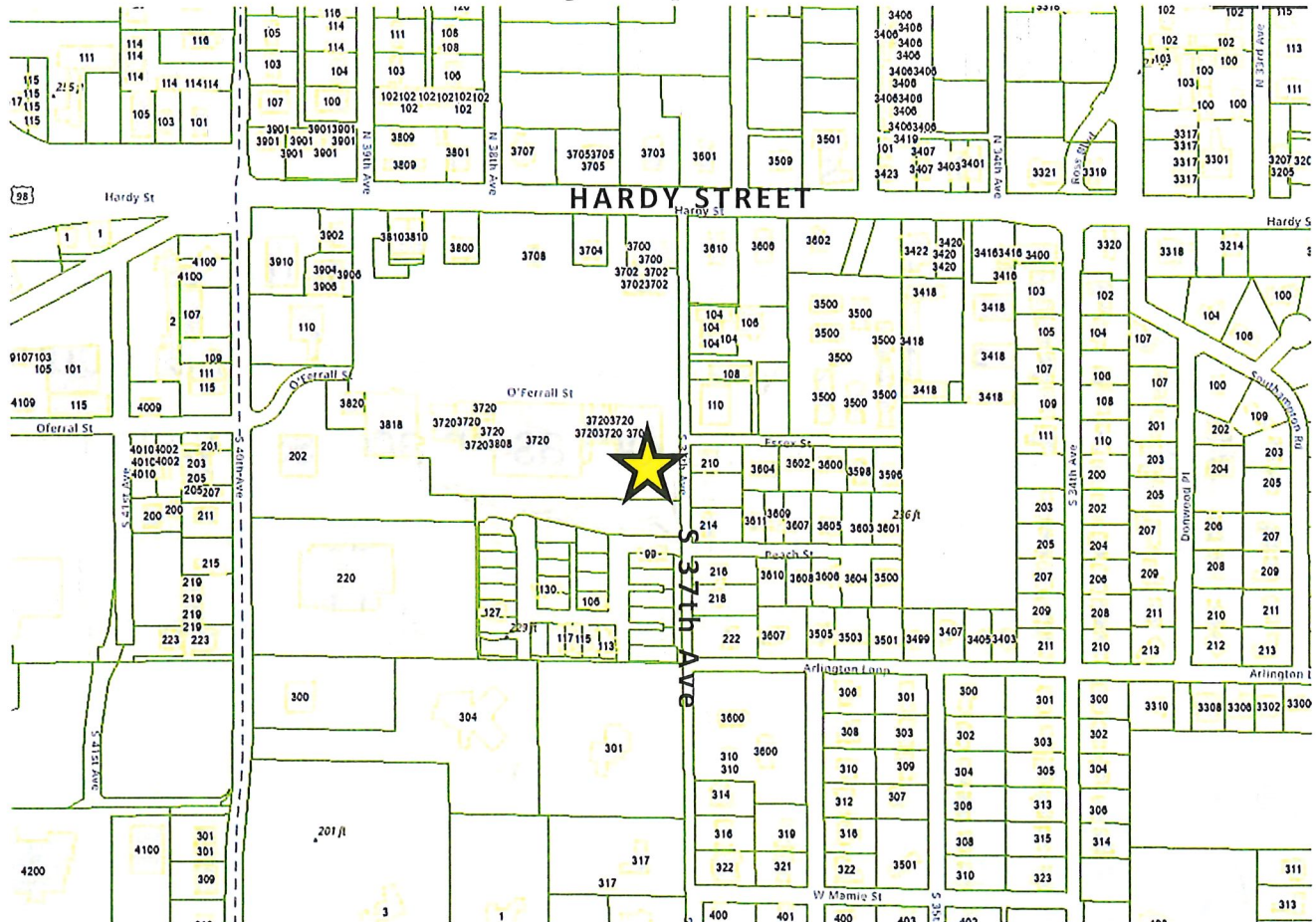
3706 Hardy Street

University Mall, LLC., Owner

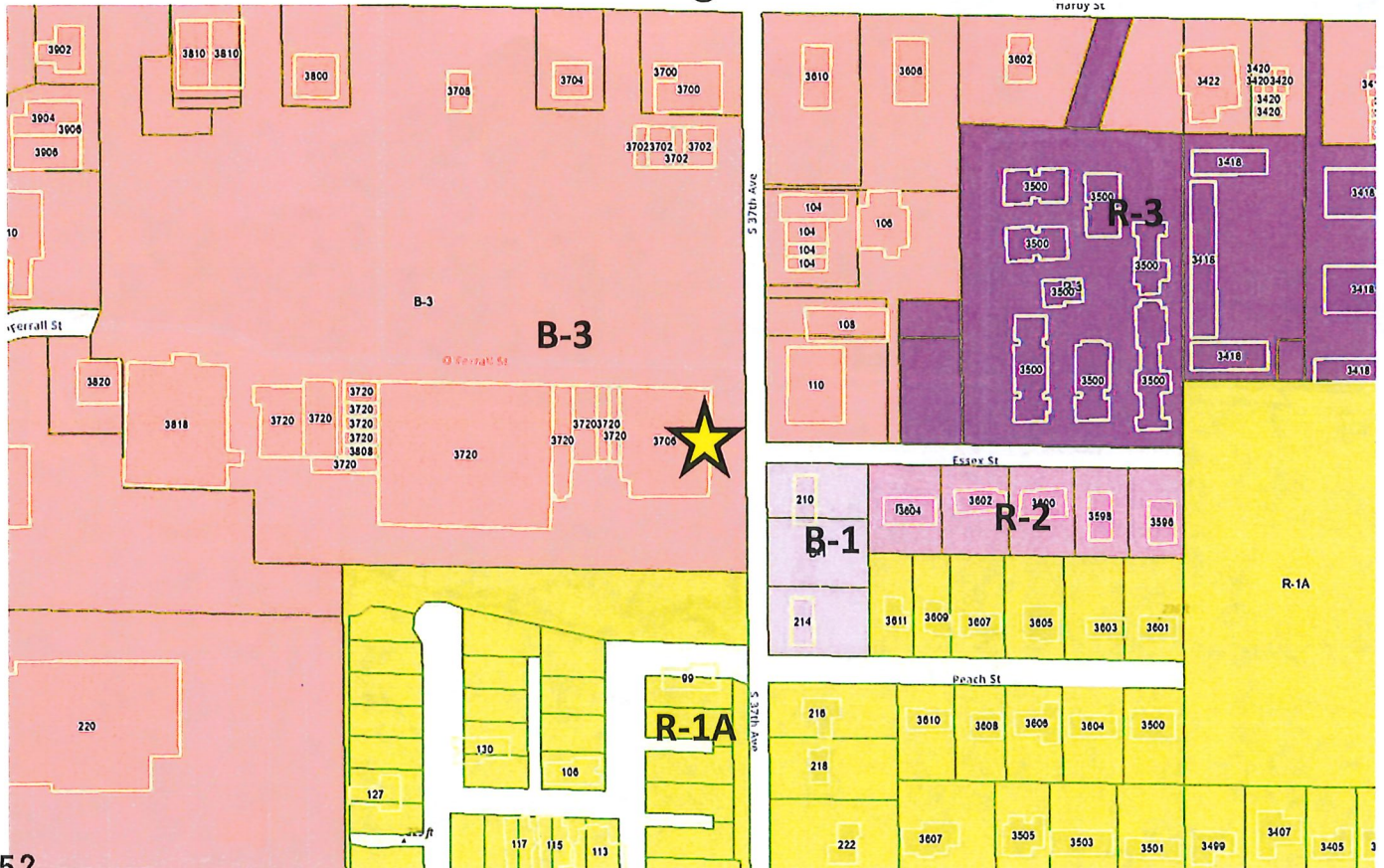
The petitioners request to appeal of City's interpretation of a "front setback" as it relates to site design and of the request to place a "propane filling station" as an accessory structure in the front setback or in the parking lot as proposed at 3706 Hardy Street by University Mall, LLC., Owner



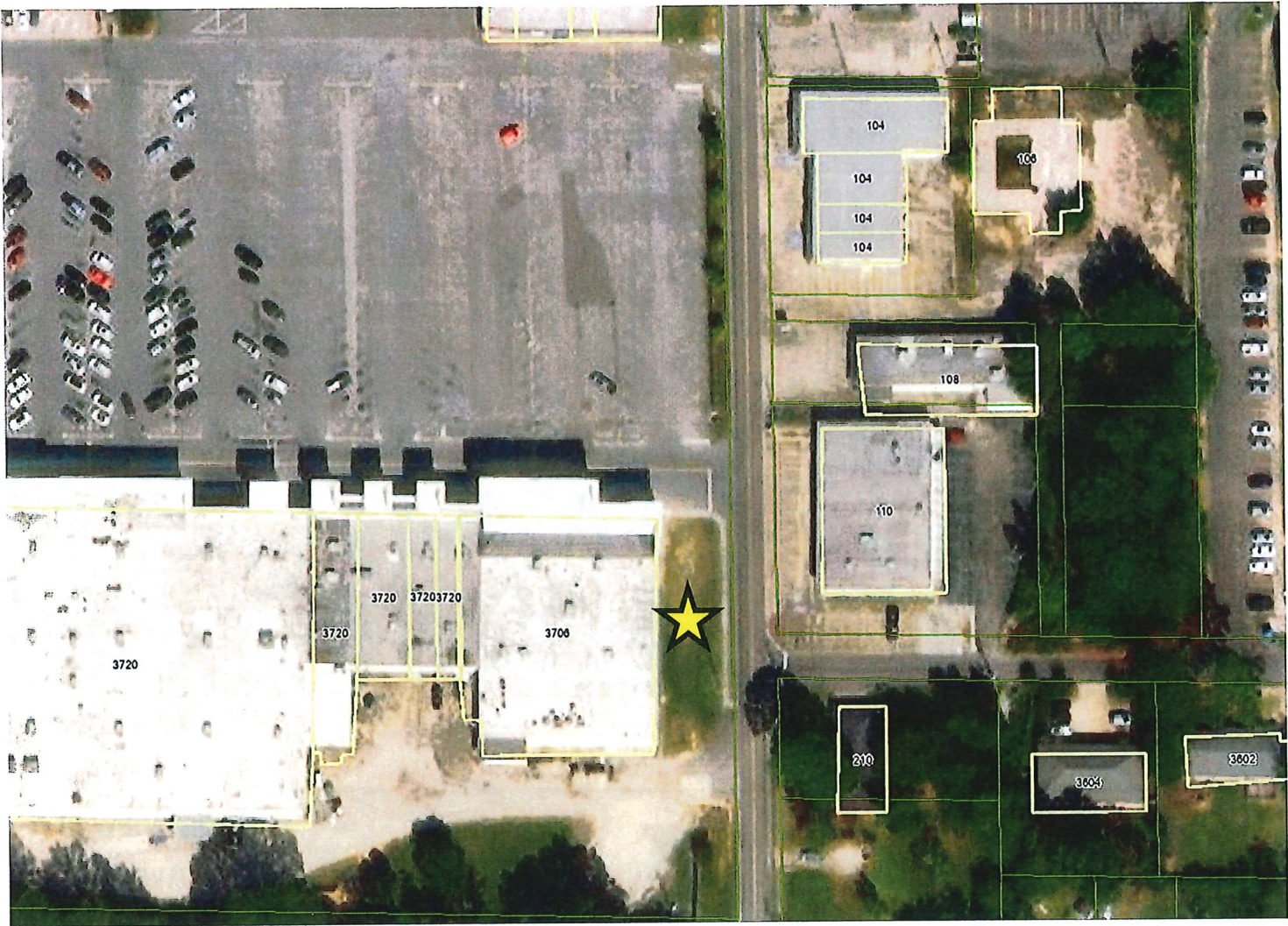
Vicinity Map—Ward 3



Zoning—B-3

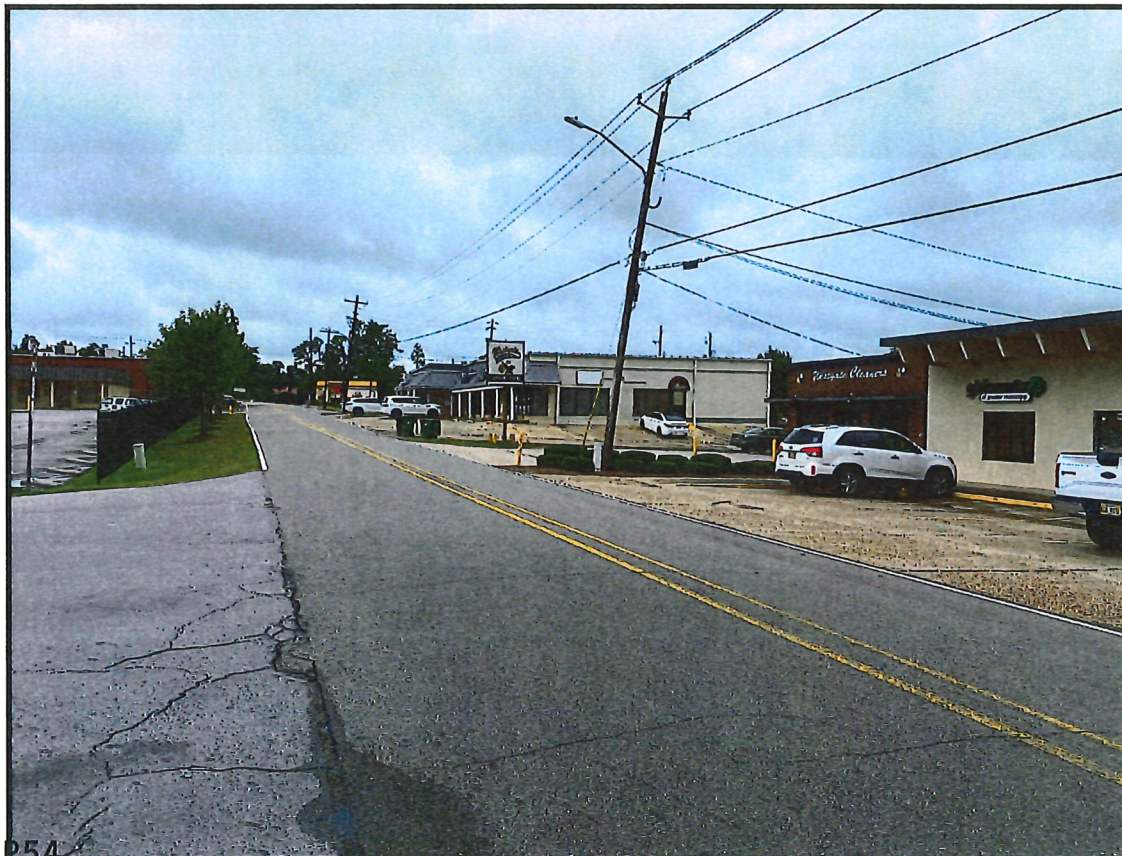


Site Aerial



Additional Photos

Street View of
S 37th Ave
(facing south)



Street View of S
37th Ave
(Facing North)

Additional Photos

Additional
Street View of
S 37th Ave
(facing south)



Parking Lot for
Midtown
Market from
S 37th Ave

SURROUNDING AREA

Location of
“front setback”
that is being
appealed



Alternative
View

SURROUNDING AREA

Midtown
Market from
Hardy Street



Midtown
Market

