

Place: Jackie Dole Sherrill Community Center (Dining Room)

Time: 3:30 PM

Board of Adjustment

AGENDA

11/2/2022

I. Business Meeting

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

II. Public Hearing

1. Presentation of Petitions for Public Hearing

A. A petition has been filed by Marc Broome, Engineer, and Garner Property and Development, LLC, owner, as required in the Land Development Code, Ord. No. 3209, to request a variance from section 6, Table 6.1 "Minimum Front Setback" for B-3, "30 feet", and instead allow a setback of 22 feet for a variance of 8 feet along Hardy for a proposed building to be located at approximately 3104 Hardy Street (Parcel No. 2-028N-07-094.00, 2-028N-07-095.00, 2-028N-07-096.01, 2-028N-07-096.00, and 2-028N-07-093.00; PPIN 26488, 26490, 44474, 26489, and 26491, Forrest Co., Ward 3).

B. A petition has been filed by William Krosp, Engineer, and SDP MS Hattiesburg 1, LLC. (Joe Pegram), 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 300 feet to a lot containing a legal, conforming residential use, and instead allow for a distance of 47 feet for a variance of 253 feet for a proposed development at 3606 Hardy Street (Parcel No. 2-028M-07-065.00; PPIN 26473, Forrest Co., Ward 3).

C. A petition has been filed by University Mall, LLC., owner, and Ron Farris, representative, and Lewis Griffin, architect as required in the Land Development Code, Ord. No. 3209, to request a variance from section 6, Table 6.1 "Minimum Front Setback" for B-3, "30 feet", and instead allow a setback of 9.1 feet for a variance of 20.9 feet along South 37th Avenue for a proposed structure and to request a variance from Section 7.9.8.6 which states, "The maximum height of fences and walls shall be four feet above grade when located in a front yard" and instead allow for an six (6) foot fence in the front yard for a variance of two (2) feet for a proposed fence located at 3706 Hardy Street fronting South 37th Avenue

(Parcel No. 2-028M-07-074.00; PPIN 26449, Forrest County, Ward 3).

III. Other Business

IV. Adjournment

MINUTES OF THE
REGULAR MEETING OF THE
HATTIESBURG BOARD OF ADJUSTMENT

October 5th, 2022

The Hattiesburg Board of Adjustment did meet in regular session on October 5th, at 3:33 PM at the Jackie Dole Community Center, 220 West Front Street, Hattiesburg, Mississippi. Shawn Harris, Chair, presided over the meeting. A quorum was indicated and the attendance was as follows:

Board Members Present: Bruce Betts
Jessica Cathey
Dick Conville
Shawn Harris, Chair
James Hughes
Lucy Parkman
Stacey Ready
James Trussell
Brandon Williams (Via GoToMeeting)

Board Members Absent: Bernard Green, Vice-Chair

Also Present: Ginger Lowrey, Planning Division Manager
Jim Gladden, Esq.
Nathan Satcher, Planner

Shawn Harris, Chair, declared the meeting of the Hattiesburg Board of Adjustment open and in session at 3:33 PM.

AGENDA REVIEW

There came the matter of the July 2022 Agenda. A motion was made by James Trussell to approve the agenda and was seconded by Bruce Betts.

Board Members voting aye: Bruce Betts
Jessica Cathey
Dick Conville
Shawn Harris, Chair
James Hughes
Lucy Parkman
Stacey Ready
James Trussell

Brandon Williams (Via GoToMeeting)

Board Members voting nay: None

MINUTES REVIEW

There came the matter of the June 1st, 2022 minutes. A motion was made to approve the minutes by Stacey Ready with a correction to the name Schlogel. The motion was seconded by James Trussell and a roll call vote was conducted.

Board Members voting aye: Bruce Betts

Jessica Cathey
Dick Conville
Shawn Harris, Chair
James Hughes
Lucy Parkman
Stacey Ready
James Trussell
Brandon Williams (Via GoToMeeting)

Board Members voting nay: None

REPORTS

PLANNING REPORT

Ginger Lowrey, Planning Division Manager, provided the Planning Report. Newly appointed director of Urban Development, Wiley Quinn, was introduced. Mr. Quinn said that he was pleased to work with the Board of Adjustment and appreciated their time working with the City of Hattiesburg.

Mrs. Lowrey reported that the 2 Southern Pointe Parkway variance was approved by council.

CHAIR'S REPORT

Shawn Harris expressed his thanks to all members present.

INTRODUCTIONS

Board members introduced themselves.

PUBLIC HEARING – BOARD OF ADJUSTMENT

There came the matter of Item A, to consider a petition has been filed by John Harmond, Applicant, Joel Ford, Engineer, and Jason Landry, architect, as required in the Land Development Code, Ord. No. 3209, to request a variance from section 6, Table 6.1 “Minimum Front Setback” for B-3, “30 feet”, and instead allow a setback of nineteen (19) feet for a variance of eleven (11) feet along Hardy Street and to request a variance from section 7, Table. 7.11-2 “Zoning Buffer Requirements” for B-3 adjacent to residentially zoned properties of “30 feet”, and instead allow a zoning buffer of ten (10) feet for a variance of twenty (20) feet for a proposed new building at 3300 Hardy Street (Parcel No. 2-028N-07-113.00, 2-028N-07-112.00 and PPIN 26484, 26485, Forrest County, Ward 3).

<u>Name</u>	<u>Address</u>	<u>City/State</u>
<u>Presented by:</u> John Harmond	3318 Hardy Street	Hattiesburg, MS
<u>Proponents:</u> Tommy Rocconi	4 Heritage Lane	Hattiesburg, MS
Joel Ford	2010 Oak Grove Rd.	Hattiesburg, MS
Jason Landry	5211 Old Highway 11	Hattiesburg, MS
<u>Opponents:</u> None		

John Harmond, applicant, expressed thanks to the Board of Adjustments and Planning staff. Harmond noted the substantial growth of the Credit Union in the last ten years. A need for a drive-in/drive-aisle in the back was advised by the Fire Department per the team’s Pre-Application meeting with the Planning Division. In addition, Harmond proposed adding a nice wood fence in the rear for a more effective privacy barrier. Harmond has not been able to get in contact with neighboring property owners. He stated that Trustmark bank to the East had no issues with the proposed variance, but provided no documentation. He noted the newly proposed building would be for support staff and provide a formal meeting space.

Conville questioned the need for the additional parking spaces when their staff is only comprised of 8-9 people. Harmond explained that adequate parking for customers, potential clients, and board meetings was needed, remarking that more is better in this situation.

Conville questioned if there were any efforts to design the property to meet code and suggested twisting the design 90 degrees as an viable option. Harmond recalled previous discussions about parking suggesting it should not be in front and that a variance would be required in any situation. Joel Ford noted that there was no way to meet code with the needs of the client. John Harmond stated that he has worked with previous architects and this concept would be

attractive for the city and practical for what they do.

Landry and Lewis put together the architectural plans after meeting with the city. Jason Landry remarked that the occupant load for the building is 80 people and Rocconi expressed that the team is following the city's recommendations to accommodate the needs of the credit union.. Ford stated that he knew they were going to deal with a variance application and that the overall plan is a better product than what is currently there now.

Chair Harris closed the public hearing portion of the meeting. Board member Stacey Ready noted they have been working with the city on this design and Commissioner Conville agreed. Chair Harris offered his thanks to the planning department for working through their design, particularly in the reduction of the front setback as the city has previously pressured front setback reductions. Lucy Parkman then made a motion to approve on approval items 2, 3, 4, 5, and 6. Stacey Ready seconded the motion and a roll call vote was conducted.

Board Members voting aye: Bruce Betts
Jessica Cathey
Dick Conville
Shawn Harris, Chair
James Hughes
Lucy Parkman
Stacey Ready
James Trussell
Brandon Williams (Via GoToMeeting)

Board Members voting nay: None

BUSINESS MEETING

There being no further business, Lucy Parkman made a motion to adjourn the meeting. The motion was seconded by Stacey Ready and all members were in favor. The meeting was adjourned at 4:06 PM.

Shawn Harris, Chair

Ginger Lowrey, Planning Division Manager



**Board of Adjustment
Case Fact Sheet**

Name of Petitioners: Marc Broome, Engineer, Garner Property and Development, LLC, owner

Address of Property:	Tax Parcel	PPIN:	Ward:
3104 Hardy Street	2-028N-07-094.00	26488	3
	2-028N-07-095.00	26490	
	2-028N-07-096.01	44474	
	2-028N-07-096.00	26489	
	2-028N-07-093.00	26491	

Request: **Front Setback Variance and Zoning Buffer Variance**

Purpose of Request: To consider a variance from section 6, Table 6.1 "Minimum Front Setback" for B-3, "30 feet", and instead allow a setback of 22 feet for a variance of 8 feet along Hardy for a proposed building to be located at approximately 3104 Hardy Street (Parcel No. 2-028N-07-094.00, 2-028N-07-095.00, 2-028N-07-096.01, 2-028N-07-096.00, and 2-028N-07-093.00; PPIN 26488, 26490, 44474, 26489, and 26491, Forrest Co., Ward 3).

Applicant Summary: See Attached

Applicable Regulations:

SECTION 4 **Zoning Districts**

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 Dimensions

6, Table 6.1 – “Min/Max Front Setback”

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%	-
B-1	0/100	-	.75	20	25	0 or 15	0	35 feet or 3 stories	80%	20
B-2	4,000/ 100	-	0.75	0	10	0 or 10	0	35 feet or 3 stories	80%	20
B-3	No minimum/ 100	-	1.00	30	-	0 or 10	0	40 feet or 3 stories	80%	30
B-4	No minimum/ none	-	No limit	0	10	0	0	135 feet or 10 stories	100%	40
B-5	No minimum/ 100	-	1.50	30	150	0 or 10	0	72 feet or 6 stories	90%	50

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.

Table 7.11-2 Zoning Buffer Requirements

Present Zoning:	B-3 (Community Business District)
Present Use:	Vacant Lot
Future Land Use:	Community Business Corridor
Surrounding Zoning: and Land Use:	North: B-3 (Community Business District) South: R-1A (Single-Family Residential) East: MX-3 (Mixed Use District) West: B-3 (Community Business District) & R-1A (Single-Family

Residential)

**Letters or
Concerns stated:**

Letters of support have been received as of October 21st, 2022 from property owners directly adjacent to the East, West, and South and are attached at the end of this report.

History / Background:

The petitioner met with staff and administration in August to discuss a new corporate office for Garner Property and Development. The applicant worked with staff to site their building in line with existing and proposed developments along Hardy Street.

The reduction of the front setback also allows for a more developable area on site, allowing for parking to be located on the side of the building, instead of in front of the building. Locating parking to the side allows for the building façade to be showcased, instead of a parking lot, which is a more desirable streetscape on a prominent corridor in the City of Hattiesburg. The reduction in the front setback may be seen as consistent with existing and future development to the east in Midtown within the Form-Based Code. The City has established a desire for more dense development in the center of town. This development follows a similar pattern.

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.
- I. 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.

This property is adjacent to Midtown (zoned MX-3). This variance is requested to align the buildings on this property with the buildings in Midtown. The city of Hattiesburg is requesting this setback variance to keep conformity with the Midtown buildings along Hardy Street.

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

Variance Information

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

By requesting a variance to the front setback, this allows us to have more room in the back of the site for needed parking + site development.

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

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

This property is adjacent to Midtown, which is zoned MX-3. Granting this variance will allow the subject property to maintain uniformity with the Midtown district. This will not conflict with the intent of the Land Development Code.

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.

The District at Midtown Retail, LLC
11 Parkway Blvd.
Hattiesburg, MS 39401

Date: October 11, 2022

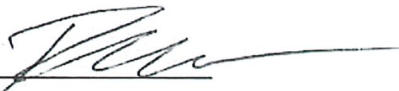
City of Hattiesburg

Re: Approval of proposed variance request
3104 Hardy Street
Hattiesburg, MS 39401

To whom it may concern:

As an adjoining landowner of the above referenced property, I give my approval of the variance request that will allow a building to be constructed inside the current setback requirement of 30 feet. It is my understanding that the proposed building will be sitting closer to Hardy Street than what is currently permitted.

Landowner Signature



The District at Midtown Retail, LLC

Its authorized signer:

Robert O. Tatum, Jr.

John D. Bullock
2 Cherokee Circle
Hattiesburg, MS 39401

Date: 10/17/22

City of Hattiesburg

Re: Approval of proposed variance request
3104 Hardy Street
Hattiesburg, MS 39401

To whom it may concern:

As an adjoining landowner of the above referenced property, I give my approval of the variance request that will allow a building to be constructed inside the current setback requirement of 30 feet. It is my understanding that the proposed building will be sitting closer to Hardy Street than what is currently permitted.



Landowner Signature

Lynn Crosby Gammill
1 Cherokee Circle
Hattiesburg, MS 39401

Date: 10-12-22

City of Hattiesburg

Re: Approval of proposed variance request
3104 Hardy Street
Hattiesburg, MS 39401

To whom it may concern:

As an adjoining landowner of the above referenced property, I give my approval of the variance request that will allow a building to be constructed inside the current setback requirement of 30 feet. It is my understanding that the proposed building will be sitting closer to Hardy Street than what is currently permitted.



Landowner Signature

Lynn Crosby Gammill
Lynn Crosby Gammill

Trustmark National Bank

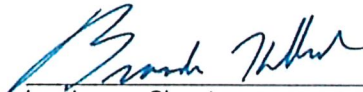
Date: 10/5/22

City of Hattiesburg

Re: Approval of proposed variance request
3104 Hardy Street
Hattiesburg, MS 39401

To whom it may concern:

As an adjoining landowner of the above referenced property, I give my approval of the variance request that will allow a building to be constructed inside the current setback requirement of 30 feet. It is my understanding that the proposed building will be sitting closer to Hardy Street than what is currently permitted.

 Branch Walker President Trustmark
Landowner Signature

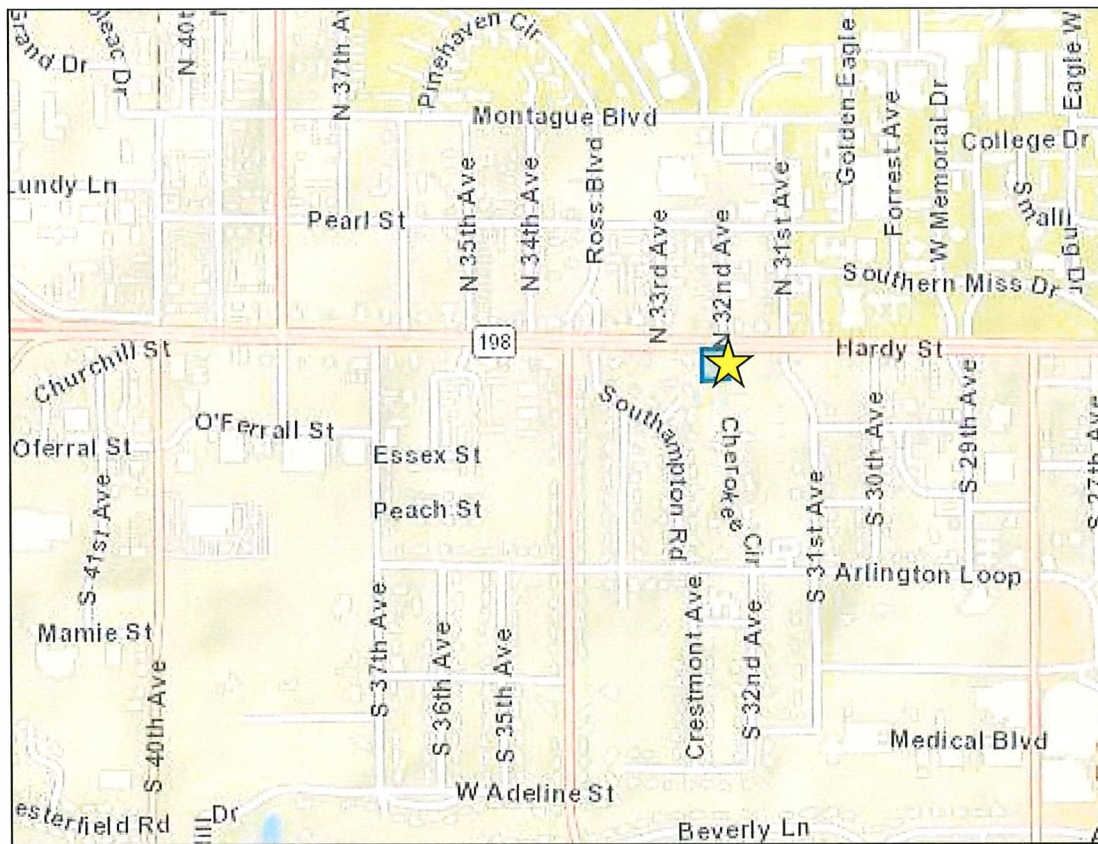
SUBJECT PARCEL: 3104 Hardy Street (Approximately)

Marc Broome, Engineer, and Garner Property and Development, LLC,
owner

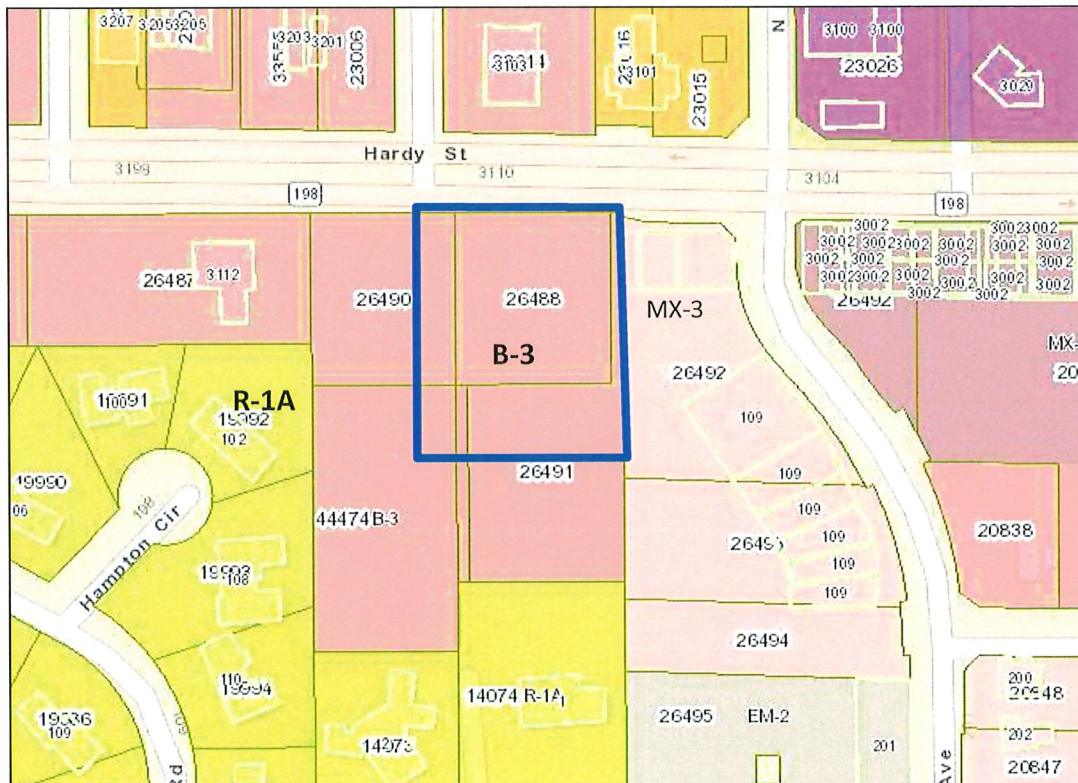
The petitioners request a variance from section 6, Table 6.1 “Minimum Front Setback” for B-3, “30 feet”, and instead allow a setback of 22 feet for a variance of 8 feet along Hardy for a proposed building to be located at approximately 3104 Hardy Street (Parcel No. 2-028N-07-094.00, 2-028N-07-095.00, 2-028N-07-096.01, 2-028N-07-096.00, and 2-028N-07-093.00; PPIN 26488, 26490, 44474, 26489, and 26491, Forrest Co., Ward 3).



Vicinity Map—Ward 3



Zoning—B-3

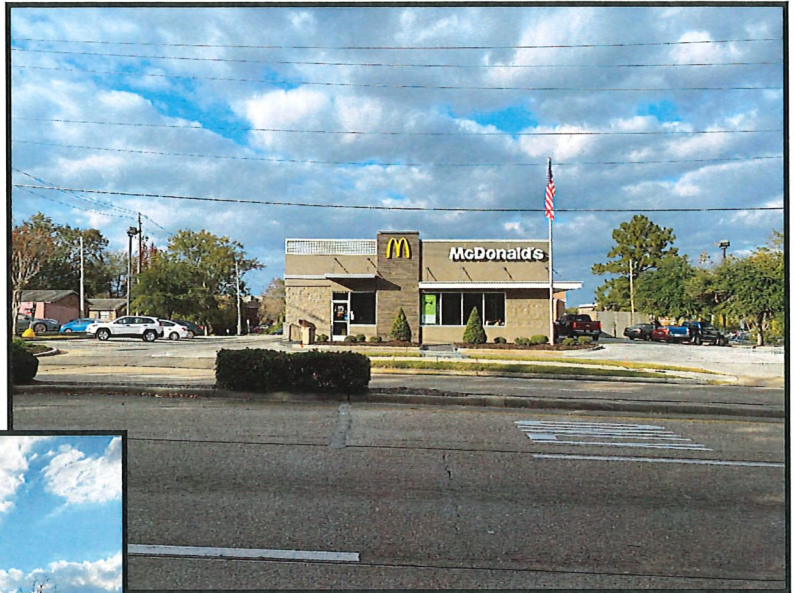


Site Aerial

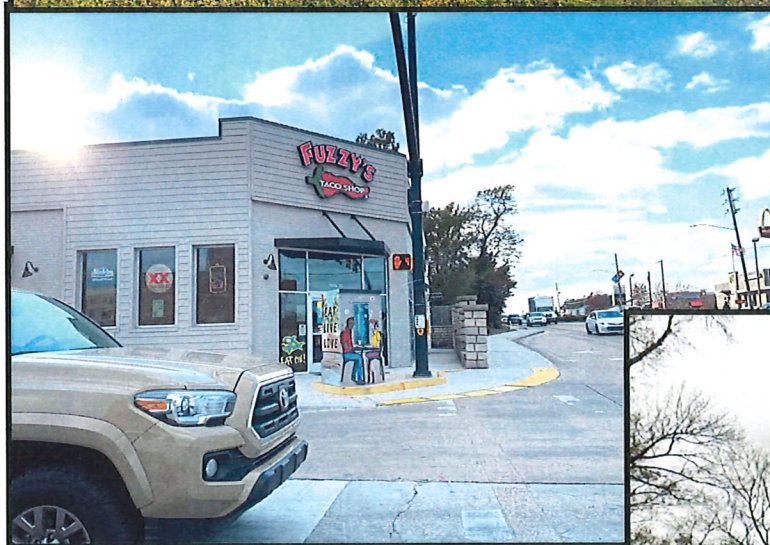


SURROUNDING AREA

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



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



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



**Western Direction: B-3
Commercial**



**Board of Adjustment
Case Fact Sheet**

Name of Petitioners: William Krosp, Engineer, SDP MS Hattiesburg 1, LLC. (Joe Pegram), Applicant

Address of Property:	Tax Parcel	PPIN:	Ward:
3606 Hardy Street	2-028M-07-065.00	26473	3

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 300 feet to a lot containing a legal, conforming residential use, and instead allow for a distance of 47 feet for a variance of 253 feet for a proposed development at 3606 Hardy Street (Parcel No. 2-028M-07-065.00; PPIN 26473, Forrest Co., Ward 3).

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.

Present Zoning:	This parcel is currently zoned B-3 Community Business District
Present Use:	Restaurant
Future Land Use:	Community Business Corridor District
Surrounding Zoning and Land Use:	North: B-3 Community Business District/ Commercial South: B-3 Community Business District/ Commercial East: B-3 Community Business District/ Commercial and R-3 Multi-family residential West: B-3 Community Business District/ Commercial
Letters or Concerns stated:	The Planning Division Office has not received any letters or other written communications relative to this case as of October 21 st , 2022. No letters of support have been received as of the writing of this report. The Board of Adjustment may ask to table the manner until communication with adjacent property owners have been documented.
History / Background:	The applicant met with staff in Pre-Application to discuss redevelopment as a restaurant with drive-through services. 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 to this corridor. Traffic maneuvers should also be considered at this location as well given the existing drive-through restaurants along this corridor. The Board of Adjustment should also consider the implications of an additional drive-through on this commercial corridor. There are currently 8 restaurants with active drive-throughs within 0.25 miles of the proposed drive-through. Drive-throughs create challenges in creating pedestrian-friendly environments. As the City of Hattiesburg grows and expands to accommodate new businesses, the Board of Adjustments should consider the impact that individual site design plays within a larger context for the overall benefit of the city and all modes of transportation.

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.
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.

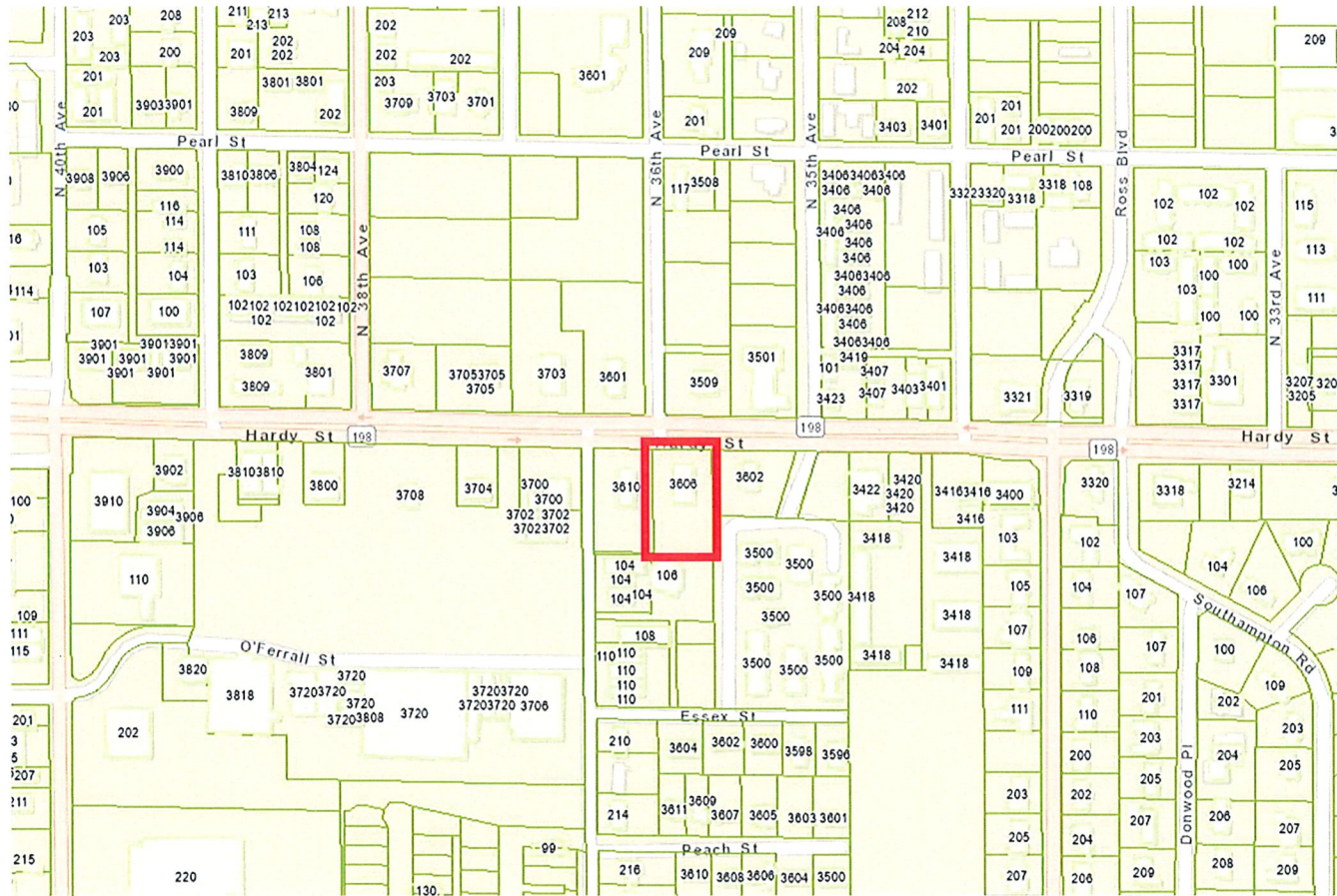
SUBJECT PARCEL:
3606 Hardy Street

William Krosp, Engineer, and SDP MS Hattiesburg 1, LLC. (Joe Pegram),
Applicant

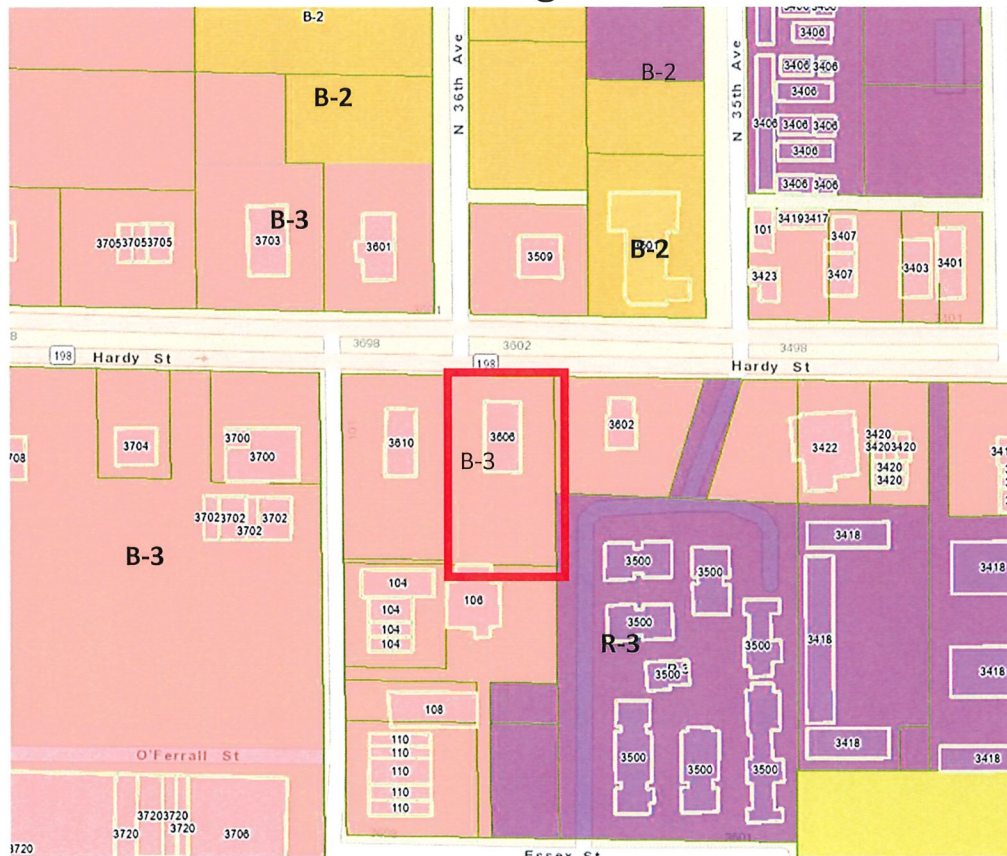
To request a variance from section 5.4.36.4, which states: “no part of the active use area of a drive through restaurant, including the drive through, menu, and window, may be located closer than 300 feet to a lot containing a legal, conforming residential use, and instead allow for a distance of 47 feet for a variance of 253 feet for a proposed development at 3606 Hardy Street (Parcel No. 2-028M-07-065.00; PPIN 26473, Forrest Co., Ward 3).



Vicinity Map—Ward 3



Zoning—B-3



Site Aerial



SURROUNDING AREA

Northern Direction: B-3 Commercial



Southern Direction: B-3 Commercial



Eastern Direction: B-3 Commercial

Western Direction: B-3 Commercial



SURROUNDING AREA

Neighboring R-3 Multi-Family
Residential within the 300 ft buffer
zone



Hardy Street Streetscape facing East
in front of proposed development



Hardy Street Streetscape facing West
in front of proposed development

Additional Property directly to the
North of Proposed Development



Item: C

University Mall, LLC., Owner, Ron Farris, representative, Lewis Griffin, architect
Request for: **Variance – Front Setback & Fence Height**



**Planning Commission
Case Fact Sheet**

Name of Petitioner: University Mall, LLC., Owner, Ron Farris, representative, Lewis Griffin, architect

Address of Property: 3706 Hardy Street **Tax Parcel:** 2-028M-07-074.00 **PPIN:** 26449 **Ward:** 3

Request: **Front Setback Variance and Fence Height Variance**

Purpose of Request: To consider a variance from section 6, Table 6.1 "Minimum Front Setback" for B-3, "30 feet", and instead allow a setback of 9.1 feet for a variance of 20.9 feet along South 37th Avenue for a proposed structure and to request a variance from Section 7.9.8.6 which states, "The maximum height of fences and walls shall be four feet above grade when located in a front yard" and instead allow for an six (6) foot fence in the front yard for a variance of two (2) feet for a proposed fence located at 3706 Hardy Street fronting South 37th Avenue (Parcel No. 2-028M-07-074.00; PPIN 26449, Forrest County, Ward 3).

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 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			
B-3	No minimum/ 100	-	1.00	30	-	0 or 10	0	40 feet or 3 stories	80%	30

SECTION 7

STANDARDS OF DESIGN

Table 7.1 Design Standards											
STANDARD		DISTRICT									
■ = Required		A-1	A-2	R-1A	R-1B	R-1C	R-2	R-3	B-1	B-2	B-3
x = Not required											
7.9.8.4	Uncoated chain link and other wire material fences shall not be permitted in a front setback except in the case of athletic or play surfaces.	■	■	■	■	■	■	■	■	■	■
7.9.8.5	Chain link fencing shall be green or black vinyl coated.	x	x	x	x	x	x	■	■	■	■
7.9.8.6	The maximum height of fences and walls shall be four feet above grade when located in a front yard. Otherwise the maximum height of a fence is eight feet.	■	■	■	■	■	■	■	■	■	■

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 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.

Present Zoning:

The parcel is currently zoned B-3, Community Business

Present Use:	Multi-tenant shopping center
Future Land Use:	Community Business Corridor and Neighborhood Conservation District 2
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 October 19, 2022
History / Background:	The property owner met with staff in the Pre-Application meeting on June 9, 2022, to discuss a new tenant proposing to occupy 3706 Hardy Street. Staff identified a conflict with the tenant's plans to construct an outdoor garden center facing S. 37th Ave. as the location of the garden center, as design, could be considered "outdoor storage". The outdoor storage of goods would be in a front setback and is not allowed in the current Land Development Code (LDC) Section 5.4.37.2, 7.9.10.4, and 7.12.10.2. Several discussions and meetings were held to find an agreeable design that would permit the tenant to utilize the space between the exiting building (formerly Corner Market) and S. 37th Ave. for a garden center. The tenant updated the site design to include a roof over the garden center and is proposing a brick and metal fence along S. 37th Ave. The City will not consider the garden center as "outdoor storage" if it is a roofed space. Therefore, the variance requested is for a front setback variance, as the roof is closer to the property line long S. 37th Ave. than the front setback requirement of 30 ft. The roofed structure is an exposed metal truss frame with a knitted shade cloth roofing membrane. This front setback variance will also relate to the addition of a propane filling station to be located on the south side of the building. Please refer to the Land Development Code Section 7.8 Building Form and Material for guidance on commercial development building design guides. Additionally, the applicant is proposing to enclose the space with a brick and metal fence. Fencing is limited to 4 feet in height in a front setback so that streetscape frontages are not occupied by fencing and instead have engaging commercial facades accessible from a street frontage. The applicant is requesting a variance to allow for a 6 ft high fence in a front setback

The Board of Adjustment may consider Conditions of Approval (LDC Sec 12.4.1.2 previously called stipulations) to the variance that relate to site design including elements that would improve engagement with the front setback, pedestrian access, and safety. Front setback requirements and fence height requirements are in place so that street frontages are consistent and also engaging to the public. While the tenant must work with an existing site and building design, the current LDC has these regulations in place so modern businesses and renovations will slowly start to confirm to traditional yet modern design requirements. Conditions of Approval could be related to the street facing façade, pedestrian access such as improved access from the street or parking lot, height, other design elements of the fence or roof, design related to the propane filling station to improve pedestrian or car access.

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.

See Attached Sheet

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.

See Attached Sheet

Variance Information

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

See Attached Sheet

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

See Attached Sheet

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.

See Attached Sheet

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.

Variance Information (continued)

2. The requested variances do not confer any special privilege denied to other lands or structures in the same zoning district. The applicant already has an approved fence on its property bordering South 37th Avenue that generally matches the height of the new fence in the proposed variance area. The setback variance allows for extension of an existing, longstanding and well-respected Midtown Market building that is completely consistent with the existing development and other commercial buildings in this area. It is a natural extension of what is already in place and will only improve the center and the neighborhood.

3. The literal interpretation of this side yard as "frontage" because of the property's unique position on Hardy and South 37th Avenue makes this variance necessary. The requested variance would not be necessary if this addition were made in its side yard, but the City's interpretation of this area is that it consists of "frontage" due to this side of the building facing South 37th Avenue, which triggers a front setback requirement. This project involves an extension of the side of the building facing a side street, with the main façade of the building well within the front setback for Hardy Street and otherwise conforming to Code. The variance is required to allow for a lateral extension of the building that happens to face a side street, and is compatible and consistent with all surrounding development.

4. The applicant cannot lease this space to Ace Hardware unless both variances are granted. The applicant has worked diligently with the City's Planning Division to explore all alternatives and believes that these variances are reasonable given the City's position on the issue and general support of the project. Ace Hardware will greatly enhance Midtown Market and provide a much-needed retail venue for local and regional residents and businesses. This variance is minimal given the existing commercial development in close proximity, the development history and layout of the current retail center and the expansion of the existing retail building will complement and expand desirable retail offerings in this area in need of solid retail anchor venues.

5. The requested setback variance is the minimum required to accommodate Ace Hardware's footprint. It does not eliminate the setback area any more than necessary, and leaves a sufficient setback to satisfy aesthetic goals and preserve safety, visibility and accessibility. The remaining setback will preserve the general appearance of a full setback and will be complimented by attractive flowering plants and other landscaping accompanying the garden center of the new Ace Hardware store.

6. These variances do not involve any prohibited use. They permit expansion of a long-established and well known retail center in Hattiesburg's revitalized Midtown area. The proposed Ace Hardware store satisfies all use requirements, continues the retail use of the entire development and surrounding area, and in no way conflicts with the use requirements of the Code. These variances represent only a minor departure from the terms of the Code by permitting a structure nearer by a few feet to the lot line than is permitted by the applicable setback requirements. This request does not authorize a use inconsistent with the Code, and is

generally consistent with the spirit of the Code as it applies to this general area and the remainder of this shopping center particularly.

SUBJECT PARCEL:
3706 Hardy Street

University Mall, LLC., owner, and Ron Farris, representative, and Lewis Griffin,
architect

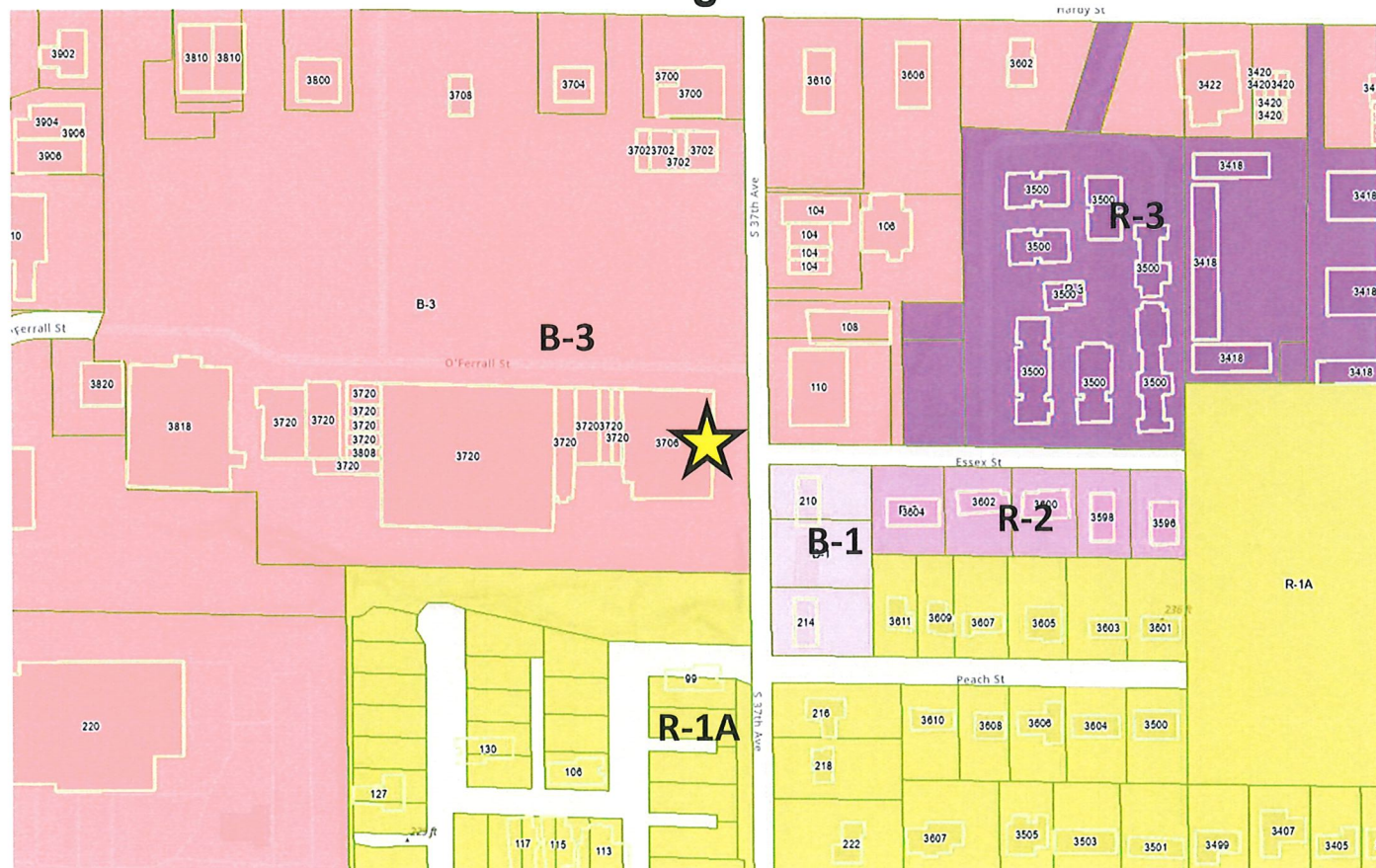
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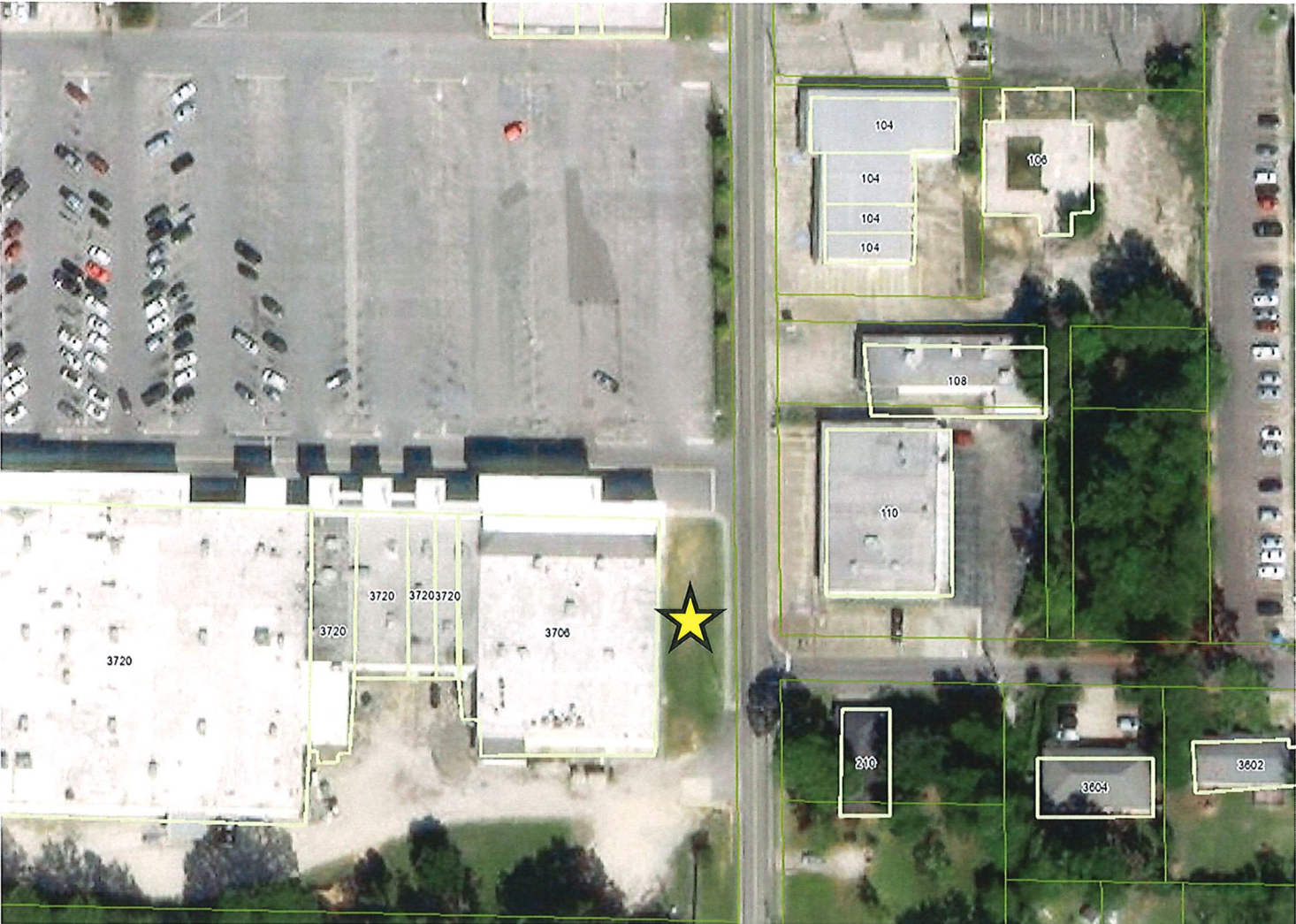
Vicinity Map—Ward 3



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

Conceptual Rendering



Trusses to be covered with same fabric material as the roof.

Proposed roofed structure materials

