

Place: Jackie Dole Sherrill Community Center (Dining Room)

Time: 3:30 PM

Board of Adjustment

AGENDA

12/7/2022

I. Business Meeting

1. Review and approval of December meeting's agenda
2. Review and approval of the minutes of the November meeting
3. Planning Report
 - A. [Map of Planning Commission and Board of Adjustment Items for December 2022](#)
4. Chair's Report
5. Introductions

II. Public Hearing

1. Presentation of Petitions for Public Hearing
 - A. A petition has been filed by Estacado Interests, LLC, applicant, as required in the Land Development Code, Ord. No. 3209, to request a variance from section 10.6 Signs – Billboards “1000 lineal feet, measured radially, from any other off-premise sign” and instead allow for a distance of “690 feet” from an off-premise sign for a variance of 310 feet and to vary from the required side setback (section 10.6) of “15 feet” and instead allow for “0 feet” for a variance of 15 feet for a proposed billboard. The applicant also requests to vary from section 10.6 Signs – Pole Sign “Minimum 150’ frontage on any premises freestanding sign” and instead allow for a minimum of “120 feet” frontage for a variance of 30 feet for a proposed on-premise pole sign. The applicant requests three (3) total variances for two (2) signs (one off-premise sign/billboard and one on-premise sign) for the property located at 5032 Hardy St (Parcel No.: 051P-11-046.000; PPIN 18460, Lamar County, Ward 3)
 - B. A petition has been filed by Michael Kent Myatt, owner, and Joel Ford, engineer, as required in the Land Development Code, Ord. No. 3209, to request a variance from section 7.12.10.4 “Maximum outdoor equipment storage space of 50%” to exceed the allowable amount to “64%” for a variance of 14% for a certain property located at 5566 Old Highway 42 (Parcel No.: 2-029A-03-031.00; PPIN 15065 Forrest County, Ward 2).

III. Other Business

IV. Adjournment

MINUTES OF THE
REGULAR MEETING OF THE
HATTIESBURG BOARD OF ADJUSTMENT

November 2nd, 2022

The Hattiesburg Board of Adjustment did meet in regular session on November 2nd, at 3:43 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: Jessica Cathey
Dick Conville
Bernard Green
Shawn Harris, Chair
Lucy Parkman
James Trussell
Brandon Williams (Via GoToMeeting)

Board Members Absent: Bruce Betts
James Hughes
Stacey Ready

Also Present: Ginger Lowrey, Planning Division Manager
Jim Gladden, Esq.
Nathan Satcher, Planner
Wiley Quinn, Director of Urban Development

Shawn Harris, Chair, declared the meeting of the Hattiesburg Board of Adjustment open and in session at 3:43 PM.

AGENDA REVIEW

There came the matter of the November 2022 Agenda. A motion was made by Lucy Parkman to approve the agenda and was seconded by Dick Conville.

Motion to Approve November 2022 Agenda

Board Members voting aye: Jessica Cathey
Dick Conville
Bernard Green
Shawn Harris, Chair
Lucy Parkman

Brandon Williams (Via GoToMeeting)

Board Members voting nay: None

Board Members not voting: James Trussell (not present during this vote)

MINUTES REVIEW

There came the matter of the October 5th, 2022 minutes. A motion was made to approve the minutes by Bernard Green with a correction to remove James Huges from the previous meeting on all voting items as he was not in attendance. The motion was seconded by Lucy Parkman and all present voted in favor of the motion.

Motion to Approve Minutes with corrections

Board Members voting aye: Jessica Cathey

Dick Conville

Bernard Green

Shawn Harris, Chair

Lucy Parkman

Brandon Williams (Via GoToMeeting)

Board Members voting nay: None

Board Members not voting: James Trussell (not present during this vote)

REPORTS

PLANNING REPORT

Ginger Lowrey, Planning Division Manager, provided the Planning Report. Lowrey started by congratulating Dr. Richard Conville on receiving the Planning Advocate of the Year Award at the Mississippi/Alabama Planning Association conference last month. She shared that his extensive experience as a commissioner for over 26 years is an asset to the city with the continuity and institutional knowledge he brings to the city. She also shared that the city received the Public Space Award for the Pocket Museum alley at the conference as well. Lowrey noted the front setback variance for 3300 Hardy Street for the new Century First Federal Credit Union was also approved City Council on October 18th, 2022.

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 that 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).

	<u>Name</u>	<u>Address</u>	<u>City/State</u>
<u>Presented by:</u>	Marc Broome	P.O. Box 580	Magee, MS
<u>Proponents:</u>	None		
<u>Opponents:</u>	None		

Marc Broome, applicant and engineer for the project, presented the application. He provided a general overview of the project and noted that the primary reason for the variance was to mirror the adjacent development in Midtown directly to the east. The reduced setback would line the building up with the buildings at the corner of Hardy St and S 31st Ave. It would also bring the building farther from the single-family residential development and allow for parking in the rear and side and not the front of the building. He noted that the entrance for this development would be through the existing Midtown Development and not on Hardy Street. Lowrey noted that a traffic study is currently under consideration for this area for future development that would require entrances/exits from Hardy Street. Harris raised the question about the relocation of the existing dumpster and Broome noted that it would be relocated and meet current code requirements.

Shawn Harris then declared the public hearing portion of the meeting closed at 4:03 PM. Bernard Green made a motion to approve based on approval items 4, and 6. James Trussell seconded the motion and a roll call vote was then conducted.

Motion to Approve Based on Approval Item # 4, 6

4 Reasonable Use

6 Conformance with the Purpose of this Code

Board Members voting aye: Jessica Cathey
Dick Conville
Bernard Green
Shawn Harris, Chair
Lucy Parkman
James Trussell
Brandon Williams (Via GoToMeeting)

Board Members voting nay: None

Record of Vote: 7-0

PUBLIC HEARING – BOARD OF ADJUSTMENT

There came the matter of Item B, to consider a petition that 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).

	<u>Name</u>	<u>Address</u>	<u>City/State</u>
<u>Presented by:</u>	William Krosp	16564 East Brewster Rd.	Covington, LA
<u>Proponents:</u>	None		
<u>Opponents:</u>	None		

William Krosp, engineer for the project, presented the application. He noted that the proposed drive-through restaurant would be a Chipotle, the national chain. Krosp stated that the drive-through would serve as a “pick-up” window and serve that purpose only. There would be no order board or speaker box and the pizza restaurant adjacent to the property operates in the same way, offering pick-up service only. He indicated that they have also worked through their site plan to achieve the required landscape buffer adjacent to residential properties as well. Board of Adjustment members asked for clarification on Chipotle’s business model, noting that the drive-through window is not their original model but a concept added in the last few years and that it

would function similar to a Subway, where they are not setup to have a traditional menu board in the drive-through. Krosp noted that it would be new construction as well, where they would be unable to use the existing building on site and it would have a smaller footprint and they would meet full dumpster requirements set forth by the city. Krosp shared letters of support that were recently obtained. Lowrey noted that only one letter showed clear support of the project and variance, and the others simply acknowledged it. Harris asked if the developer had considered any other sites or if this was their only consideration. Krosp responded that they had considered multiple locations, but this was the only one that allowed for enough stacking.

Shawn Harris then closed the public hearing portion of the meeting and stated that he wished Mr. Pegram (the developer) would have attended in person because he had quite a few questions for him. Commissioner Conville made a motion to approve based on approval criteria item 2, seconded by Bernard Green. A roll call vote was then conducted.

Motion to Approve Based on Approval Item #2

2 Special Privilege

Board Members voting aye: Jessica Cathey
Dick Conville
Bernard Green
Lucy Parkman
James Trussell
Brandon Williams (Via GoToMeeting)

Board Members voting nay: Shawn Harris

Record of Vote: 6-1

PUBLIC HEARING – BOARD OF ADJUSTMENT

There came the matter of Item C, to consider a petition that 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 a 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).

	<u>Name</u>	<u>Address</u>	<u>City/State</u>
<u>Presented by:</u>	Ron Farris	PO Box 1458	Madison, MS
	Poncho James	105 (illegible)	
<u>Proponents:</u>	David Majure	(none provided)	
	Andy Stetelman	3906 Hardy St.	Hattiesburg, MS
<u>Opponents:</u>	None		

Ron Farris, representative, presented the application. He noted the two variance requests would be to accommodate Ace Hardware, the proposed tenant for the space. He noted that the tenant would need outdoor space for their garden center, where the building would be extended. The front setback variance would be for the extension of the “building” and the fence height variance would be to match the existing fencing that was approved along S 37th Ave. Lowrey remarked that the existing fencing had not been approved by the City. Farris noted his client believed it had been approved, and he disagreed with the interpretation of the code in how it related to his front setback. Farris claimed that Ace Hardware could not make use of the space without the additions and variances and considered this a compromise on their part.

Board members raised questions about how the extension would affect the mural, which was coordinated and funded by the Hattiesburg Association for Public Art. Farris noted they would retain the mural. David Majure, the owner of multiple Ace Hardware locations in the southeast, spoke on their desire to be in this Midtown Location and had worked extensively with Andy Stetelman on finding the right property. Board members sought clarification from Majure on some business functions, which he clarified as it related to their operation needs.

Board members also raised concerns over the propane filling station and how it would function and it’s visual impact where it would be located. David Majure, owner of the proposed Ace noted it was an essential part of their business model and typically prefer it to be in the front of their business, where certified operators would fill the tanks.

Andy Stetelman spoke in favor of the request, stating he has worked extensively with the applicant to locate in the Midtown area. Harris asked if they had spoken with any other potential tenants for this site. Poncho James noted they have been selective with their tenants and worked

with the Roberts Company (Corner Market) to ensure they had a tenant that was appropriate for the site.

Shawn Harris then closed the public hearing portion of the meeting at 5:20 PM and stated that he did not like the location of the propane station. Lowrey noted that the City Administratively approved the propane station in the rear as its location in the front was not approvable by the Land Development Code. Lucy Parkman made a motion to approve the front setback variance on the basis of approval criteria 4 and 5 and was seconded by Jessica Cathey. A roll call vote was then conducted.

Bernard Green, made a motion to approve the fence height variance on the basis of approval criteria 1 and 6. The motion was seconded by Jessica Cathey.

Front Setback Variance - Motion to Approve Based on Approval Item # 4, 6

1 Reasonable Use

6 Conformance with the purpose of this Code

Board Members voting aye: Jessica Cathey

Dick Conville

Bernard Green

Shawn Harris, Chair

Lucy Parkman

James Trussell

Shawn Harris

Brandon Williams (Via GoToMeeting)

Board Members voting nay: none

Record of Vote: 7-0

Fence Height Variance - Motion to Approve Based on Approval Item # 1, 6

1 Hardship

6 Conformance with the purpose of this Code

Board Members voting aye: Jessica Cathey

Dick Conville

Bernard Green

Shawn Harris, Chair

Lucy Parkman

James Trussell

Shawn Harris

Brandon Williams (Via GoToMeeting)

Board Members voting nay: none

Record of Vote:

7-0

BUSINESS MEETING

There being no further business, Bernard Green made a motion to adjourn the meeting. The motion was seconded by Jessica Cathey and all members were in favor. The meeting was adjourned at 5:30 PM

Shawn Harris, Chair

Ginger Lowrey, Planning Division Manager

Estacado Interests, LLC, applicant

Request for: **Required Billboard Spacing Variance, Billboard Setback Variance, and Freestanding sign minimum frontage variance**



**Board of Adjustment
Case Fact Sheet**

Name of Petitioners: Estacado Interests, LLC.

Address of Property:
5032 Hardy Street

Tax Parcel
051P-11-046.000

PPIN:
18460

Ward:
3

Request: **Required Billboard Spacing Variance, Billboard Setback Variance, and Freestanding sign minimum frontage variance. 3 Variances total for 2 signs**

Purpose of Request: To consider to request for a variance from section 10.6 Signs – Billboards “1000 lineal feet, measured radially, from any other off-premise sign” and instead allow for a distance of “690 feet” from an off-premise sign for a variance of 310 feet and to vary from the required side setback (section 10.6) of “15 feet” and instead allow for “0 feet” for a variance of 15 feet for a proposed billboard. The applicant also requests to vary from section 10.6 Signs – Pole Sign “Minimum 150’ frontage on any premises freestanding sign” and instead allow for a minimum of “120 feet” frontage for a variance of 30 feet for a proposed on-premise pole sign. The applicant requests three (3) total variances for two (2) signs (one off-premise sign/billboard and one on-premise sign) for the property located at 5032 Hardy St (Parcel No.: 051P-11-046.000; PPIN 18460, Lamar County, Ward 3)

Applicant Summary: See Attached

Applicable Regulations:

Estacado Interests, LLC, applicant

Request for: **Required Billboard Spacing Variance, Billboard Setback Variance, and Freestanding sign minimum frontage variance****SECTION 4****Section 10 – Signs****Table 10.6**

Table 10.6 - 2 Dimensional Requirements By Sign Type					
Sign Type	Sign Height/Width (max)	Sign Message Area (max) (sq. ft.)	Setback (min.)		Additional Criteria
			Front	Side	
On Premises Signs Freestanding					
Monument Sign	10'/None	All applicable zones except I-1 and I-2 – 50 square feet;	5'	15'	1 per 500' of parcel street frontage /2 on corner lot (1 per street) with 150' min. frontage for any on premises freestanding sign; bottom edge of message area is min 18" and max 30" above ground; dimensions include multitenant signs
		For I-1 and I-2 – 72 square feet			
Pole Sign	35'/20'	For B-3 – 1square foot sign message area/1' street frontage up to 200 square feet	10'	15'	1 per 500' of parcel street frontage/2 on corner lot (1 per street) with 150' min. street frontage for any on premises freestanding sign; Bottom edge of message area is min. 6' above ground; dimensions include multitenant signs
		B-5, I-1, I-2 – 2 square feet sign message area/1' street frontage up to 400 square feet			
Off Premises <u>Free Standing</u> (Billboards)					
Billboard Signs - B5, I-1 and I-2 Only	10' (min)/35' (max) Height 40' width	400 square feet	25' (Front and Rear)	15'	1 per lot, 1000 lineal feet measured radially, from any other off premises sign, maximum of 2 faces, and not within 100' of A or R zones

Section 10.10.3

Billboard signs shall be in a separate lease area with a clear zone radius where parking, storage, and other uses are prohibited. The lease area must be landscaped. No part of the billboard sign can overhang the boundaries of the lease area.

Present Zoning: B-5 Regional Business

Present Use: Automotive Maintenance and Repair / Vacant

Future Land Use: Regional Business Corridor

Surrounding Zoning:

Estacado Interests, LLC, applicant

Request for: **Required Billboard Spacing Variance, Billboard Setback Variance, and Freestanding sign minimum frontage variance**

and Land Use:

North: B-5 (Regional Business District)
South: B-5 (Regional Business District)
East: B-5 (Regional Business District)
West: B-5 (Regional Business District)

Letters or

Concerns stated:

The Planning Division Office has not received any letters or other written communications relative to this case as of November 29th, 2022. The applicant has not submitted letters of approval/denial from adjoining neighbors as of the writing of this report. The Board of Adjustment has the option to table the item until letters of approval/denial have been received.

History / Background:

The applicant met in Pre-Application to discuss the redevelopment of the site for a proposed gas station (Murphy USA). A legal non-conforming billboard is currently located on the site and will need to be removed for the redevelopment of this parcel. A perpetual easement is in place for the billboard and to develop the site, the developer is proposing to relocate and adjust the perpetual easement for the existing billboard and place it on the eastern boundary of the property in order to make more use of the site. The proposed location of the billboard places it within the required buffer range for the placement of new billboards, which is 1000 feet. The proposed placement would locate the billboard at 690 feet from the nearest billboard. The applicant also proposes to locate the billboard within the required side setback of 15 feet, reducing the setback to 0 feet. Setbacks for signs and billboards are the measurement from the leading edge of the billboard and not the pole. It is measured from the portion of the sign that extends the farthest out.

The applicant is also requesting a variance for their freestanding pole sign for the gas station. Our sign ordinance requires that properties have a minimum of 150' of linear frontage to establish a freestanding sign and the applicant is seeking a variance to reduce that requirement to 120 feet, as that is the maximum width of the lot.

Sign control and regulations are necessary to protect the beauty, character, economic and aesthetic value of land and to protect the safety, welfare, and public health of citizens. Because of their size and their intrusion, they raise concerns for communities. Along the Highway 98 / Hardy Street corridor west of Interstate 59, there are 27 billboards/off-premise signage, where all are considered legal and non-conforming in that they do not meet the minimum 1000 ft buffer distance.

Minimum lot widths for freestanding signs are also in place to protect communities, in that they prevent the establishment of free-standing signs on narrow lots. Minimum lot widths prevent the landscape from becoming cluttered with signs.

Estacado Interests, LLC, applicant

Request for: **Required Billboard Spacing Variance, Billboard Setback Variance, and Freestanding sign minimum frontage variance**

The city understands the need for signage, and one condition the board of adjustment could ask is that the proposed freestanding sign be installed meet the requirement of a monument sign, as opposed to a pole sign to help alleviate visual clutter along this corridor. Monument signs have a maximum height of 10 feet, whereas pole signs can be established at a maximum height of 35 feet.

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.

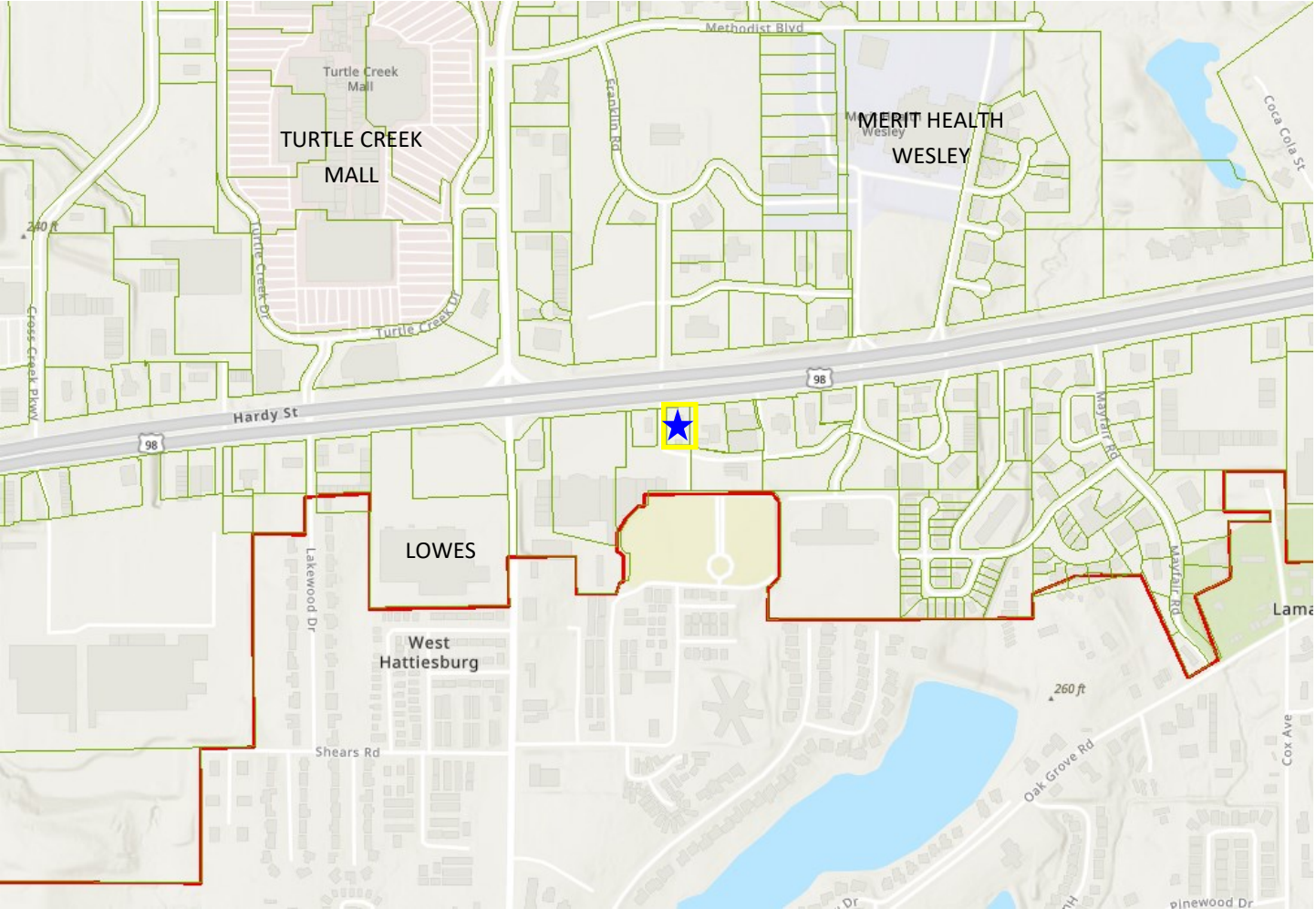
SUBJECT PARCEL: 5032 Hardy Street

Estacado Interests, LLC., Applicant

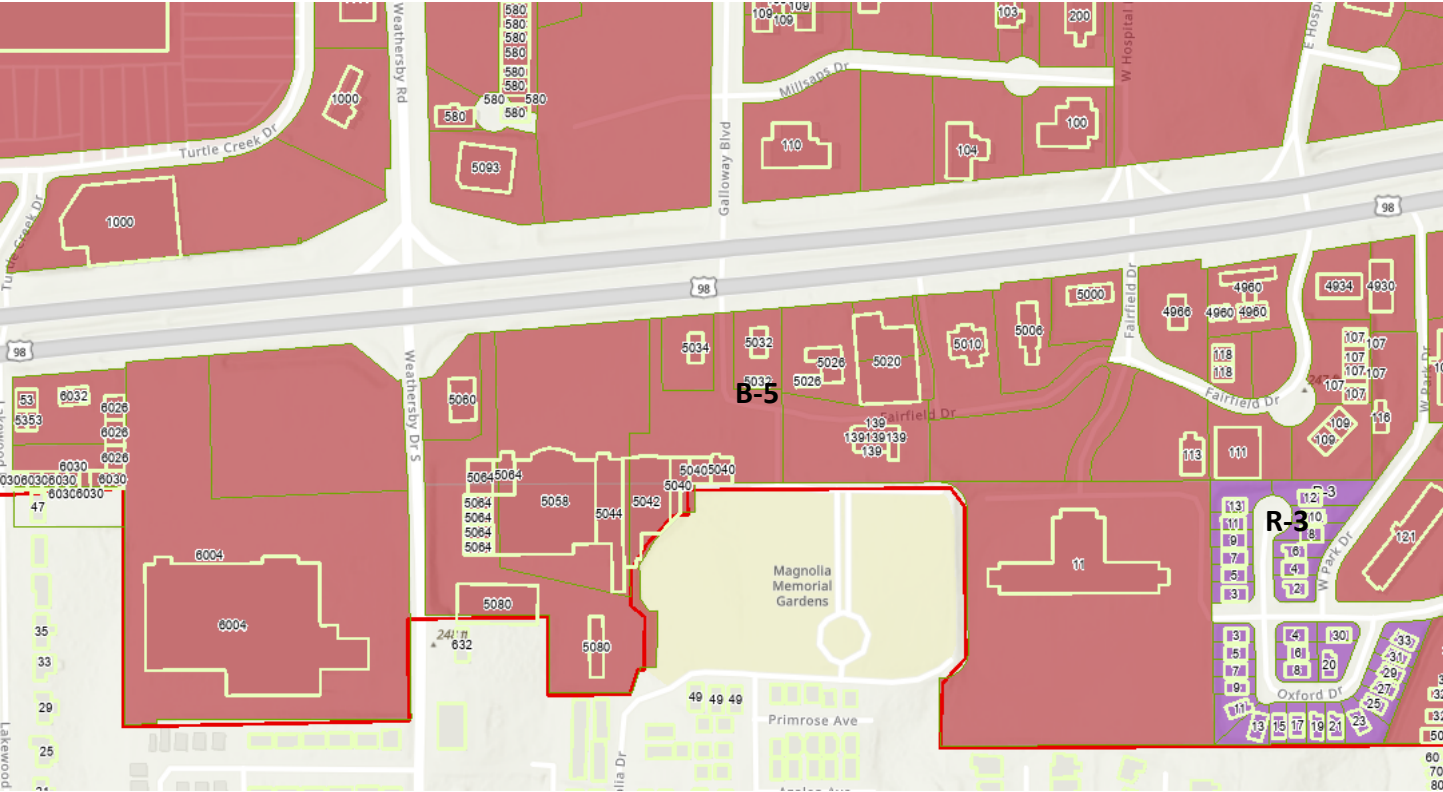
To consider to request for a variance from section 10.6 Signs – Billboards “1000 lineal feet, measured radially, from any other off-premise sign” and instead allow for a distance of “690 feet” from an off-premise sign for a variance of 310 feet and to vary from the required side setback (section 10.6) of “15 feet” and instead allow for “0 feet” for a variance of 15 feet for a proposed billboard. The applicant also requests to vary from section 10.6 Signs – Pole Sign “Minimum 150’ frontage on any premises freestanding sign” and instead allow for a minimum of “120 feet” frontage for a variance of 30 feet for a proposed on-premise pole sign. The applicant requests three (3) total variances for two (2) signs (one off-premise sign/billboard and one on-premise sign) for the property located at 5032 Hardy St (Parcel No.: 051P-11-046.000; PPIN 18460, Lamar County, Ward 3)



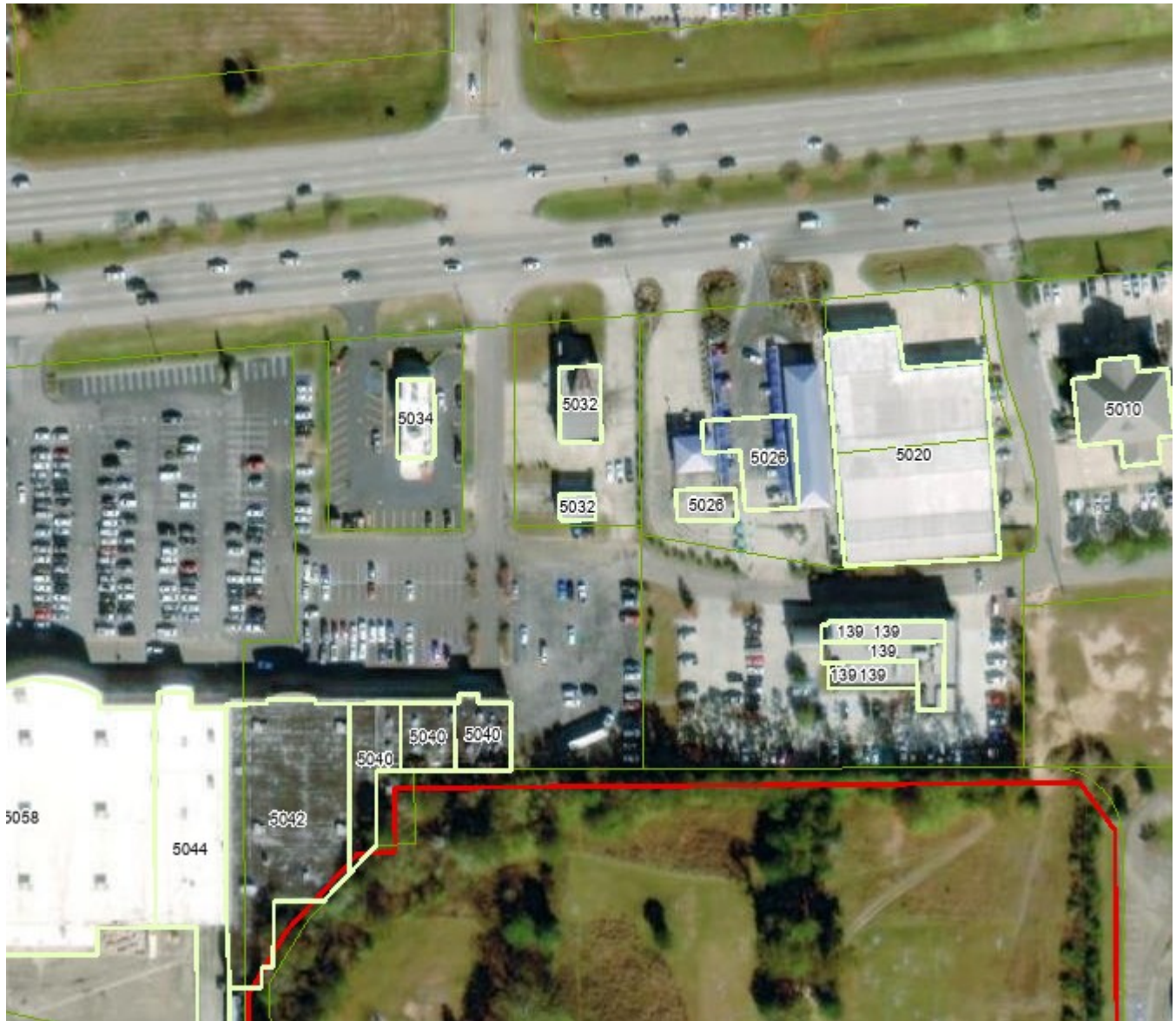
Vicinity Map—Ward 3



Zoning—B-5 (Regional Business)



Site Aerial



SURROUNDING AREA

Northern Direction: B-5 (Regional Business)



Southern Direction: B-5 (Regional Business)



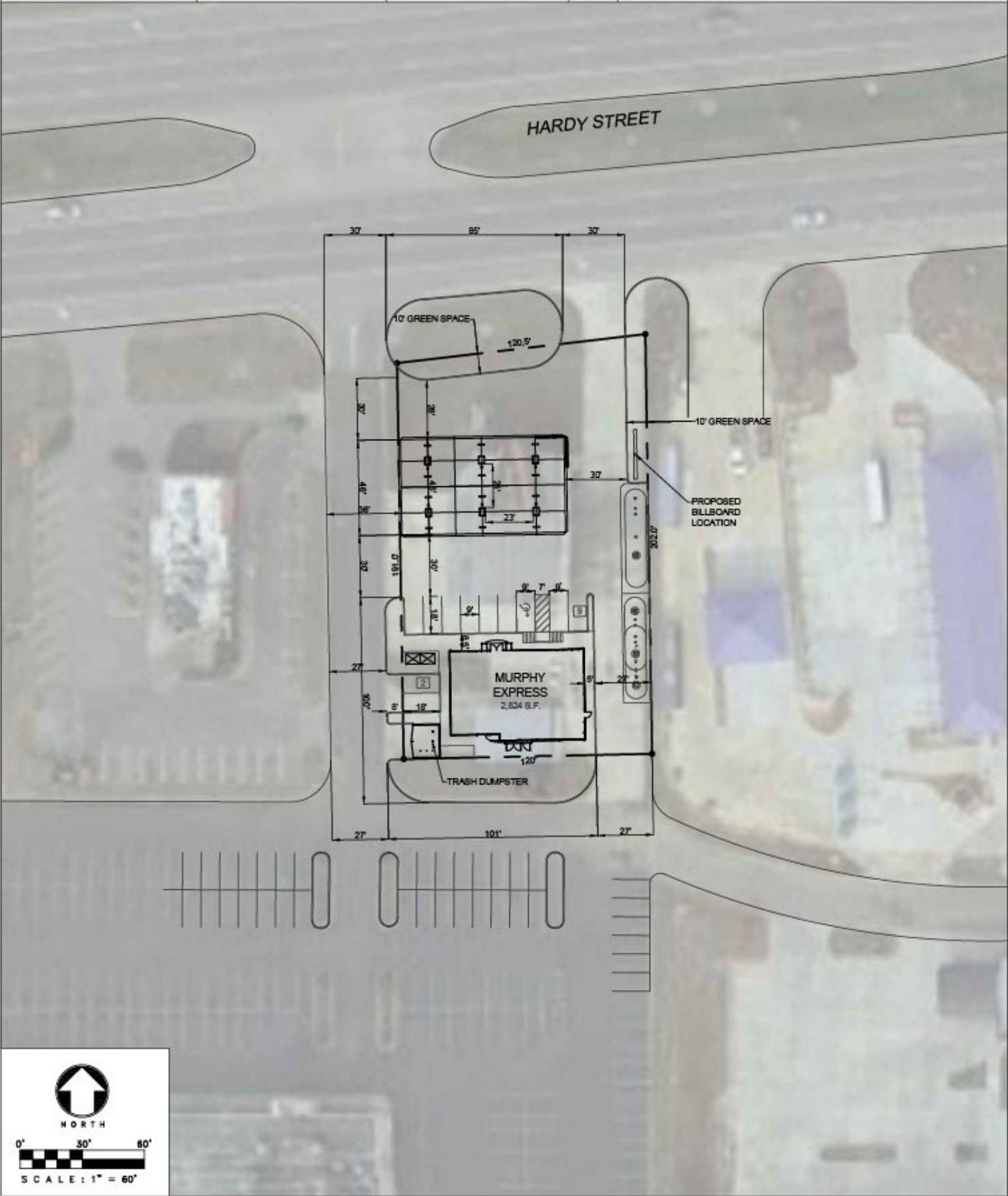
Eastern Direction: B-5 (Regional Business)



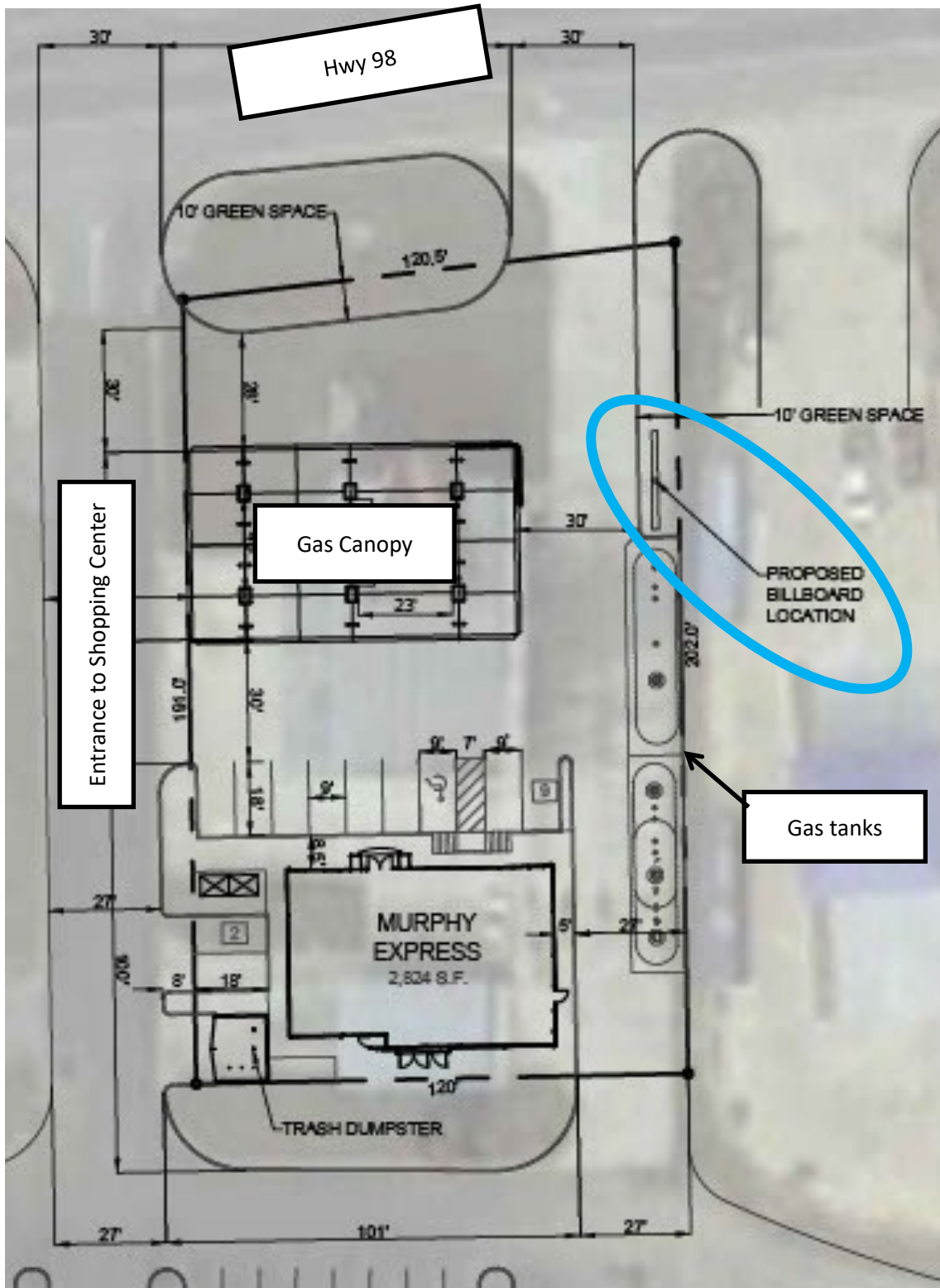
Western Direction: B-5 (Regional Business)

Preliminary Site Plan

PRELIMINARY SITE PLAN			HATTIESBURG, TEXAS HARDY STREET		NOTES: 1. THIS PRELIMINARY SITE PLAN IS FOR PLANNING PURPOSES ONLY. 2. THIS PRELIMINARY SITE PLAN MUST BE REVIEWED BY ALL GOVERNING JURISDICTIONS FOR COMPLIANCE. 3. ALL EXISTING CONDITIONS MUST BE VERIFIED. 4. ALL MEASUREMENTS ARE ESTIMATED.
PROTOTYPE:	MURPHY	DEVELOPER	DESIGNER	DATE	
BLDG SF:	2,824 SF	COMPANY: ESTACADO INTERESTS	COMPANY: STUDIO GREEN SPOT	10-13-22	
ACREAGE:	+/- 0.54 ACRES	NAME: DEVAN PHARIS	NAME: TOM TRONZANO		
PARKING PROVIDED:	11 SPACES	PHONE #: 940-550-8066	PHONE #: 469-990-0475		



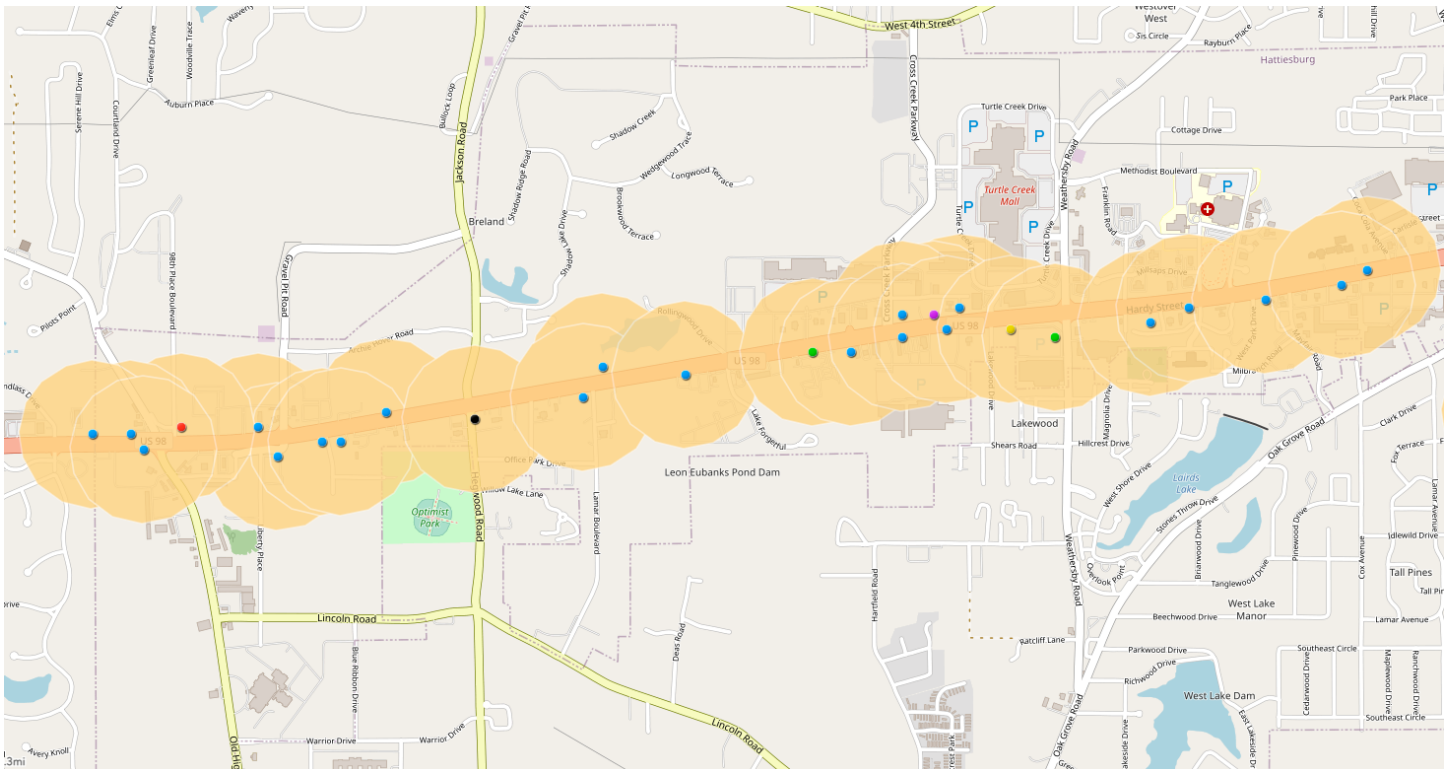
Focused View of Site Plan



Map of Existing Billboards on HWY 98 Corridor West of I-59

With 1000-foot buffer

(required minimum spacing for new billboards)



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.

The hardship is the existing billboard is located within a perpetual easement with no termed lease near the center of the property, and can effectively remain in its current location forever. The property owner has no right to move or remove the billboard without Billboard owner's consent. The billboard cannot be relocated anywhere on the property and be in compliance with the spacing requirements between billboards as stated in the code.

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

There is no special privilege created by the variance request for other property owners. The billboard is already in place and has the right to stay there unless City intervenes to allow for its relocation to a more suitable and safer location within the property.

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 literal interpretation of the code prohibits the property from ever being redeveloped into anything but an oil change or auto-service building. The building is currently a vacant oil change building and is 1 of 7 oil change facility buildings within a 1 mile radius.

Variance Information

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

The code prohibits the property from ever being used reasonably, as the existing building cannot be removed and no one is willing to lease the building for its limited uses of auto service or oil change because of the national competition and saturation in the immediate vicinity.

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

Because of the properties configuration orientation of the property to adjacent public and private roads, the billboard cannot be relocated, to a material degree, any further away from the nearest billboard, which is 690' to the East, and still allow the property to be used in a reasonable manner.

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 purpose of the code is to reduce the quantity of billboards and limit their proximity to one another. Because the current billboard has the right to remain for perpetuity, there is no way to remove it from the property. The billboard is also 690' from the next closest billboard which is only a 30% variance. Moving the billboard also allows for the removal of a billboard that overhangs a structure, which is not allowed per 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.

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.

The site currently has a pylon sign. We are requesting a variance for the minimum frontage required for a pylon sign. Our site is approximately 30' under the 150' requirement. Both neighbors have pylon signs, as do most properties along this corridor. Preventing us from having a pylon sign puts us at a severe disadvantage and creates an undue hardship for our property as it relates to other lots nearby and in our 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.

There is an existing pylon sign on the property and both of our neighbors both have pylon signs, one of which also has less than 150' of frontage. Therefore, no special privilege exists.

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.

Our site is adjacent to a shared access drive on the West side which, if taken into account, effectively gives our site 150' of frontage. Literal interpretation of the code excludes this drive, which is critical to our property functionality and shouldn't be without consideration with this request.

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.

There is no way to locate the sign anywhere on the property that would comply more closely with the 150' requirement

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.

Because of the 30' shared drive isle discussed above and its adjacency to our property, our variance request follows the spirit of the 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.

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.

The property is 120' wide and less than 0.55 acres in size. After imposing the 15' billboard setback from side property lines, the property is left with 90' of develop-able width. There is also an existing billboard within the property overhanging a vacant oil change building. The existing billboard is within a perpetual easement with no termed lease, and can effectively remain in its current location forever. The hardship at hand is the existing billboard location and the overall size and narrowness of the property

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

There is no special privilege created by the variance request for other property owners. The other billboards in this area are encroaching in front and side setbacks.

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.

Again, there is an existing billboard within the property overhanging a vacant oil change building. The existing billboard is within a perpetual easement with no termed lease, and can effectively remain in its current location forever. The billboard owner will not agree to remove the billboard under any circumstances, but is willing to allow it to be relocated within the property. Without the requested variance, there is no way to place the billboard anywhere within the property, which prohibits the redevelopment of the property as a whole.

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

The requested variance of a 0' side billboard setback is the minimum required variance to be able to repurpose the property for uses allowed in this zoning district. It is important to note that most uses allowed in this zoning district would still not be able to fit on the some 110' of remaining width.

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



**Board of Adjustment
Case Fact Sheet**

Name of Petitioners:	Michael Kent Myatt, owner, and Joel Ford, engineer		
Address of Property:	Tax Parcel	PPIN:	Ward:
5566 Old Highway 42	2-029A-03-031.00	15065	2
Request:	Outdoor equipment storage yard area variance		
Purpose of Request:	To vary from section 7.12.10.4 "Maximum outdoor equipment storage space of 50%" to exceed the allowable amount to 64% for a variance of 14% for a certain property located at 5566 Old Highway 42 (Parcel No.: 2-029A-03-031.00; PPIN 15065 Forrest County, Ward 2).		
Applicant Summary:	See Attached		
Applicable Regulations:	7.12.10.4 A maximum outdoor equipment storage space of 50% of the side and rear lot area is allowed for business and industrial equipment and materials if outdoor storage is an accessory to another use on the same lot.		
Present Zoning:	This parcel is currently zoned B-3 (Community Business) District		
Present Use:	Small Engine repair, maintenance, and sales		
Future Land Use:	Community Business Corridor		
Surrounding Zoning and Land Use:	North: B-3 (Community Business) District South: B-3 (Community Business) District East: B-3 (Community Business) District West: B-3 (Community Business) District		
Letters or Concerns stated:	The Planning Division Office has not received any letters or other written communications relative to this case, as of November 29 th , 2022.		
History / Background:	The petitioner met with Staff in Pre-Application to discuss the		

Item: B

Michael Kent Myatt, owner, and Joel Ford, engineer
Request for a **Storage Yard Area Variance**

expansion of their outdoor equipment storage space to accommodate their commercial needs. The applicant proposes to increase outdoor storage through the addition of an equipment storage yard on the western portion of the site. The storage yard exceeds the allotted area permitted for outdoor equipment storage. Staff could not approve the expansion as proposed.

The applicant is requesting a Variance of 13% for an outdoor storage space of 63% of the side lot area (only 50% yard coverage is permitted per Sec 7.12.10.4.). The application is also contingent upon the approval of the additional requests by the applicant, in that they are seeking to vacate an alley directly to the west in order to develop on the lot and a conditional use for a gravel outdoor storage.

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.

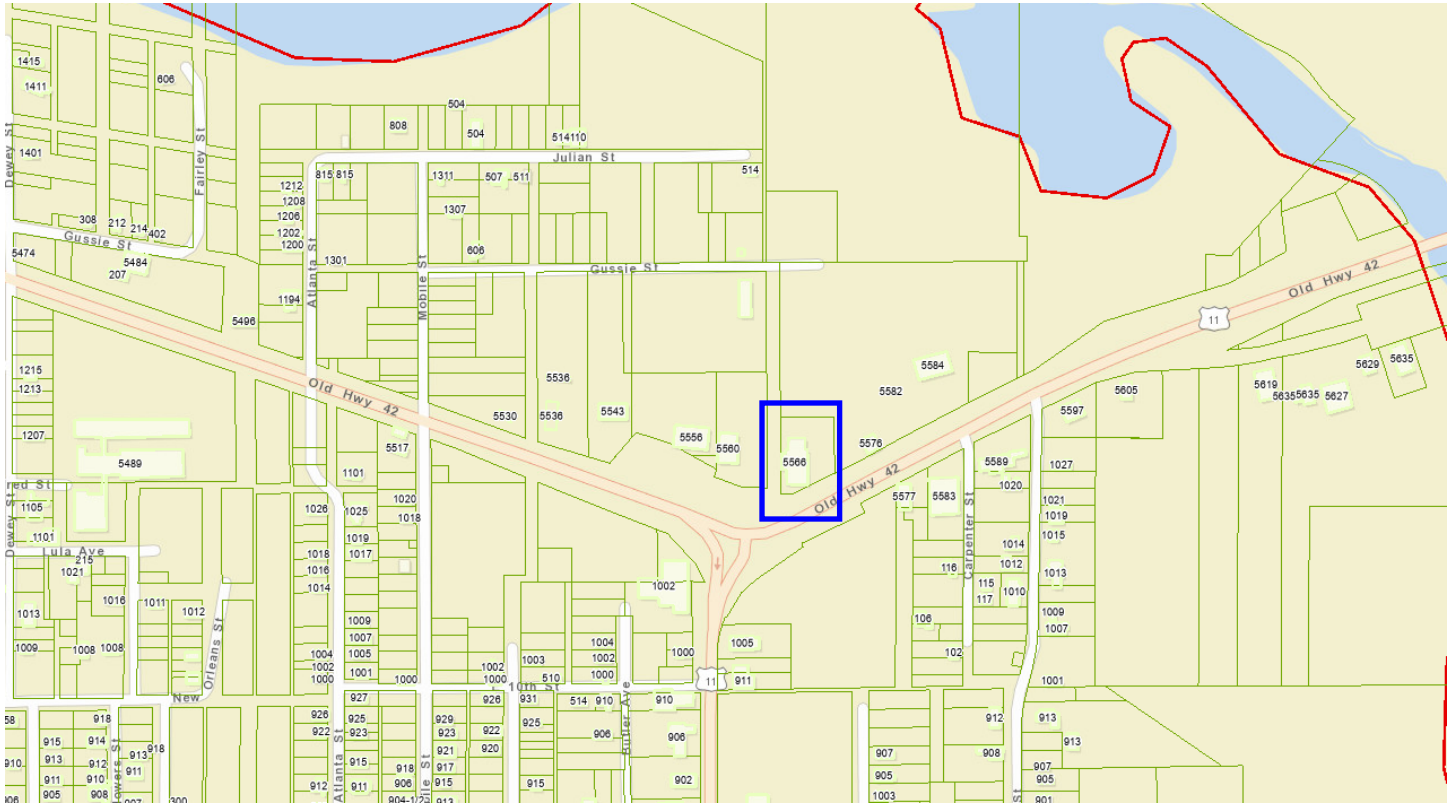
SUBJECT PARCEL: 5566 Old Highway 42

Michael Kent Myatt, Owner, and Joel Ford, Engineer

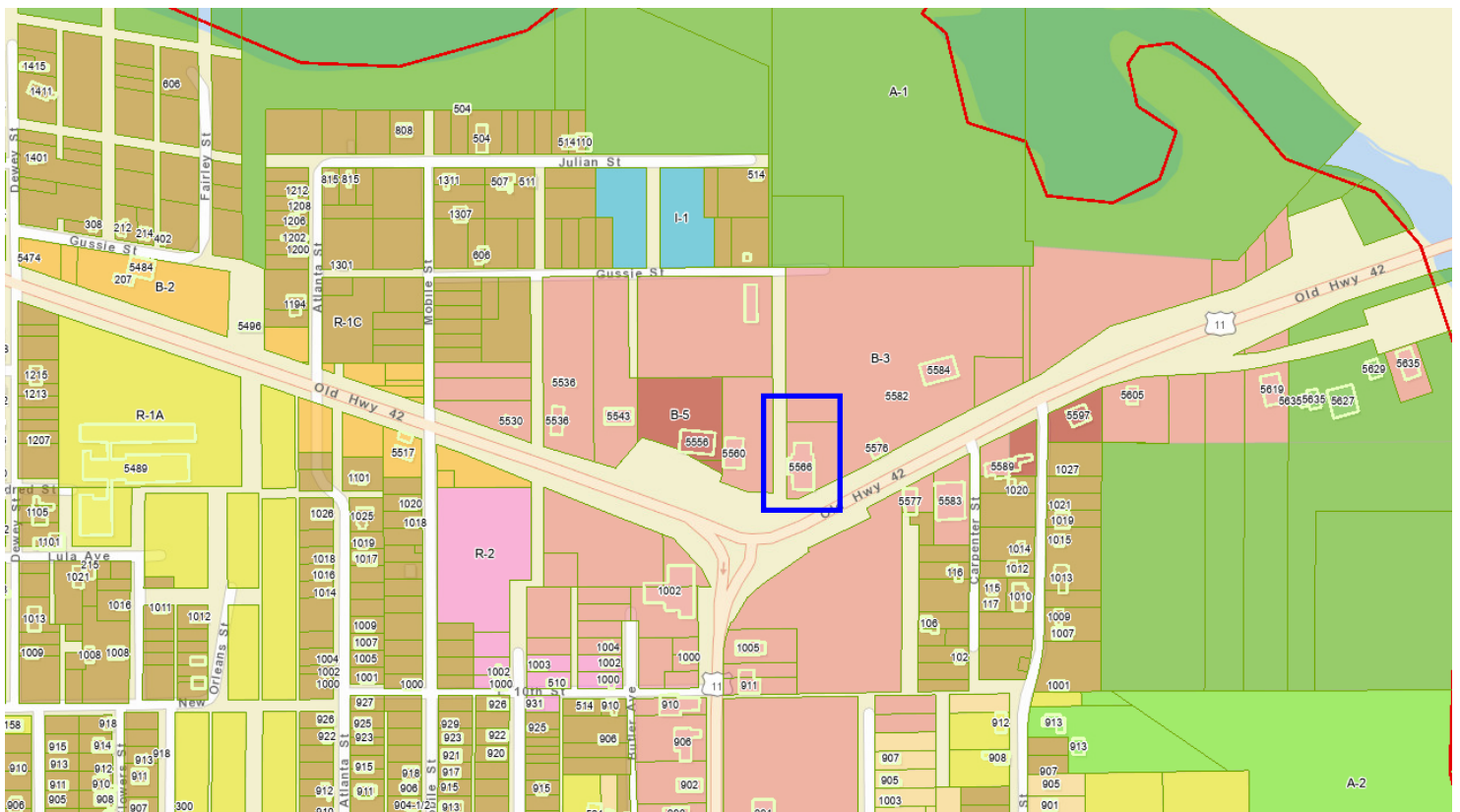
A petition has been filed by Michael Kent Myatt, owner, and Joel Ford, engineer, as required in the Land Development Code, Ord. No. 3209, to request a variance from section 7.12.10.4 “Maximum outdoor equipment storage space of 50%” to exceed the allowable amount to “64%” for a variance of 14% for a certain property located at 5566 Old Highway 42 (Parcel No.: 2-029A-03-031.00; PPIN 15065 Forrest County, Ward 2).



Vicinity Map—Ward 2



Zoning—B-3



Site Aerial



SURROUNDING AREA

**Northern Direction: B-3/A-1 Parcels
and remainder of alley**



**Southern Direction: B-3 Undeveloped
/ Intersection of Bouie and HWY 42**



Eastern Direction: B-3

Restaurant and Tow Yard (Legal non-conforming)



**Western Direction: B-3 Deviney
Construction**

Site Plan

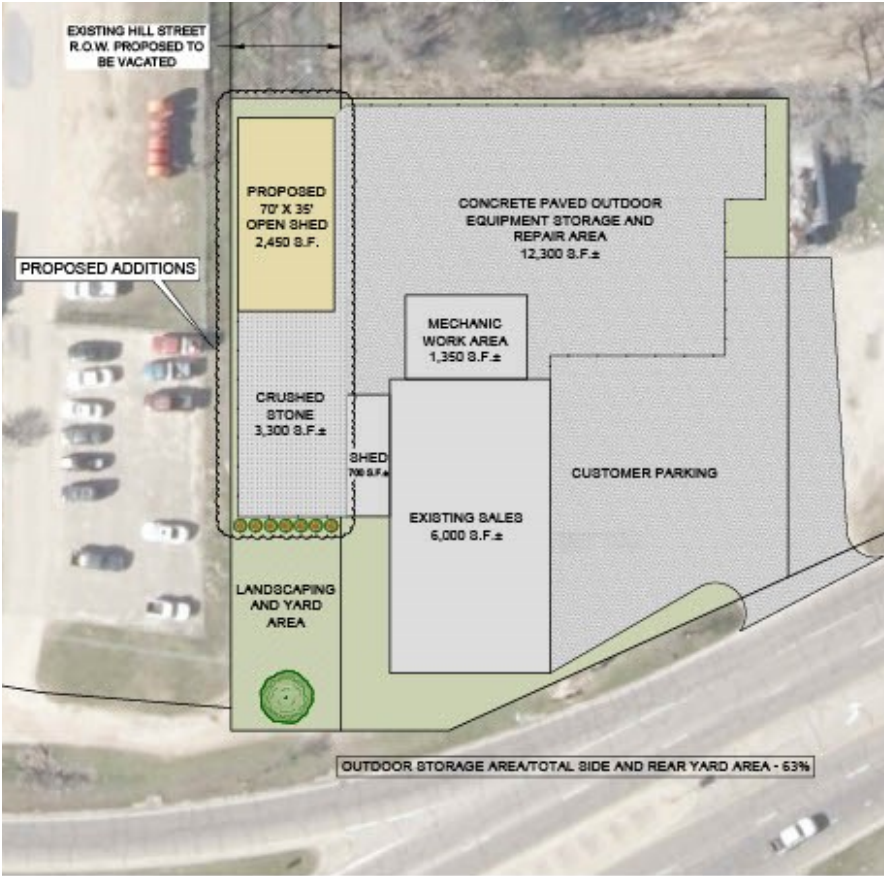


EXISTING PROPERTY OWNERSHIP AND VICINITY MAP
1" = 50'



CONCEPTUAL UNDERWOOD OUTDOOR POWER ADDITIONS AND IMPROVEMENTS
1" = 20'

Focused View



CONCEPTUAL UNDERWOOD OUTDOOR POWER ADDITIONS AND IMPROVEMENTS

Variance Information

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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.

b. Due to one increased business, two the pandemic I am asking for a variance to add a fenced area to the alley vacated next to my property. The variance I need is to add gravel to this vacated ROW that is over the 50% allowed in building codes for outside storage and graveled areas. Code 7.12.10.4

The pandemic has created supply chain issues which have created shortages in the lawn and garden retail space. Typically, mower Mfg we able to produce and store at their factory what was needed in the retail chain during the heavy retail selling months. In the past if I needed to replace 10 retailed mowers I just placed an order and they would show up in 3-5 days. That is no longer the case. Retailers are placing yearly orders in October/November and the manufacturers are sending to us some percentage of what we are going to get for the year. If retailers are not able accept large chunks of mowers when they are ready, they will miss out on units to sell for 4-6 months. I need to have approximately 4000 Sq-Ft (90 mowers) of storage space to store what I will be receiving in January-February. I do have some options, I can lease warehouse space, this is expensive and has been in short supply around my location. In addition, we must trailer mowers between the store and the warehouse which creates additional inefficiencies.

After the alley is vacated, Deviney Construction has agreed verbally to let me have their portion of the vacated alley for my addition.

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

No. My direct neighbor to the west, Deviney Construction's property is ~85% storage for large commercial equipment, My neighbor to the east, Jimmy Odom and Scott Taylor's parking lots are 95% gravel. A restaurant and towing lots are operated out of these properties. What I am

Variance Information

asking for is not out of the norm for businesses in this area. Bordering my property to the north east are two large commercial abandoned car storage lots.

I feel I have been a good steward for this property since taking ownership in 2014. When I purchased the property there were abandoned semi trailers, these were removed. The front of the store had pavement, which I had removed and replanted with grass. We have always maintained our portion of the Hill St alley.

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.

Non Applicable

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

I am completely out of space and my business will be throttled if I do not develop a plan to increase storage. This is the most cost-effective option.

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

In my opinion, yes.

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

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.