

AGENDA
GAUTIER PLANNING COMMISSION
May 1, 2025
5:30 PM

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE (VOLUNTEER)

III. APPROVAL OF AGENDA

IV. APPROVAL OF MINUTES

1. Approval of Minutes from December 5, 2024, March 6, 2025, & April 3, 2025

**V. PUBLIC COMMENTS
(MATTERS OF THE PLANNING COMMISSION NOT LISTED ON THE AGENDA)**

VI. OLD BUSINESS

VII. NEW BUSINESS

1. Consider a request for a sixty-four foot (64') variance to front yard setback requirements for an accessory structure in a R-1 Low Density Single-Family Residential Zoning District. 1590 Collin J McRae Drive, PID #82511040.000 & #82511020.000, (GPC #25-16-VAR)
2. Consider a request for a SPECIAL EXCEPTION that would allow construction of a building to be utilized as a warehouse in a TC Town Center Zoning District. PID #82435240.001, Old Spanish Trail. (GPC #25-17-SE)
3. Consider a request for a SPECIAL EXCEPTION that would allow a duplex in a R-1 Low Density Single-Family Residential Zoning District. 3517 Raintree Drive, PID #82434083.000. (GPC #25-18-SE)
4. Consider a request for a two-foot (2') variance to fence height in a front yard in a R-1 Low Density Single-Family Residential Zoning District. 1424 Wesleyan Street, (GPC #25-19-VAR)
5. Consider a request to amend the UDO to reflect text changes to Section 4.23.1(B) Loading, hauling and removal of tree limbs and debris (City initiated) (GPC #25-20-UDO)

VIII. GENERAL DISCUSSION

1. PREVIOUS CASE UPDATES

2. PERMIT & TRC REPORTS

IX. ADJOURN

DECEMBER 5, 2024
GAUTIER, MISSISSIPPI

BE IT REMEMBERED that a meeting of the Gautier Planning Commission of The City of Gautier, Mississippi, was held on December 5, 2024, at 5:30 PM in the Council Chambers of the Gautier Municipal Building at 3330 Highway 90, Gautier, Mississippi.

Commission Members present were: Chairman Kay C. Jamison, Commissioners Josh Ward, Maurice Hudson, and William Davis. Also present were Scott Ankersen, Planning Director, Josh Danos, City Attorney (by phone), and Babs Logan, Planning Technician. Absent were DeAnna McManus, Chris Hoover, and Ricky Decoteau.

AGENDA

GAUTIER PLANNING COMMISSION

DECEMBER 5, 2024

5:30 P.M.

- I. CALL TO ORDER**
- II. PLEDGE OF ALLEGIANCE (VOLUNTEER)**
- III. APPROVAL OF AGENDA**
- IV. APPROVAL OF MINUTES (NOVEMBER 7, 2024)**
- V. PUBLIC COMMENTS
(MATTERS OF THE PLANNING COMMISSION NOT LISTED ON THE
AGENDA)**
- VI. OLD BUSINESS**
- VII. NEW BUSINESS**
 - 1. Consider a request for a one-foot (1') variance to fence height in a front yard in a R-1 Low Density Single-Family Residential Zoning District. 1715 Piney Lane, (GPC #24-52-VAR)

2. Consider a request for a Conditional Use-Major that would allow a Cigar Lounge with a Bar in a C-2 Community Commercial Zoning District. 3880 Gautier Vancleave Road, Suite #9, (GPC #24-53-CU)

VIII. GENERAL DISCUSSION

- A. PREVIOUS CASE UPDATES
- B. PERMIT & TRC REPORTS

IX. ADJOURN

Commissioner Ward made a motion to approve the Agenda.

Commissioner Davis seconded the motion, and the following vote was recorded:

AYES: Kay C. Jamison
Josh Ward
Maurice Hudson
William Davis

ABSENT: DeAnna McManus
Chris Hoover
Ricky Decoteau

Motion Passed

Commissioner Ward made a motion to approve the November 7, 2024, minutes.

Commissioner Hudson seconded the motion, and the following vote was recorded:

AYES: Kay C. Jamison
Josh Ward
Maurice Hudson
William Davis

ABSENT: DeAnna McManus
Chris Hoover
Ricky Decoteau

Motion Passed.

PUBLIC COMMENTS (MATTERS OF THE PLANNING COMMISSION NOT LISTED ON THE AGENDA) - None

OLD BUSINESS - None

NEW BUSINESS

1. Consider a request for a one-foot (1') variance to fence height in a front yard in a R-1 Low Density Single-Family Residential Zoning District. 1715 Piney Lane, (GPC #24-52-VAR)

Scott Ankerson, Planning Director, gave a brief overview of the case. He reminded the Commissioners that the applicant had received a one-foot (1') height variance for a fence in his front yard a couple of months ago. The applicant has decided he would like to modify the original variance and extend the fence to the front property line. Mr. Ankerson wanted to bring the request back to the Planning Commission because of the change in the location of the fence.

REQUEST:

The Planning Department has received a request from Roger Dulcich for a one-foot (1') variance to fence height in a front yard in a R-1 Low Density Single-Family Residential Zoning District at 1715 Piney Lane, PID #85440148.000 (GPC #24-52-VAR). The application fee of \$175 was paid on October 18, 2024. All public notice requirements have been met.

BACKGROUND:

On September 17, 2024, the City Council approved a one-foot (1') variance to fence height requirements in a front yard for the applicant. The applicant would like to change the location of the fence that was approved in September and place it closer to the front and secondary front property lines than was originally approved. Per the Unified Development Ordinance (UDO), fences shall not exceed four feet in height within a designated front yard. The applicant will need a 1' variance to fence height in a front yard.

DISCUSSION:

The applicant is asking for a one-foot (1') variance to fence height in a front and secondary front yard. Although he was previously approved for a one-foot (1') height variance for a fence in his front and secondary front yard, the approval was based on the location presented at the September meetings of the Planning Commission and City Council.

DETERMINATION OF APPLICABLE LAW:

The Unified Development Ordinance (UDO) defines **Variations** as:

A Variance is a relaxation of the terms of the Unified Development Ordinance where such Variance will not be contrary to the public interest and where, owing to conditions peculiar to the property, a literal enforcement of the Ordinance would result in an unnecessary or undue hardship. As used in this Ordinance, a Variance is authorized only for height, area and size of structure, or size of yards, separation of uses, open spaces, off-street parking spaces and some subdivision of property. The establishment or expansion of a use not permitted shall not be allowed by Variance.

The UDO defines **Hardship** as:

Hardship means the unnecessary hardship that would result from a failure to grant the requested variance or special exception. An unnecessary hardship exists if:

- (1) the land in question cannot yield a reasonable return if used only
 - (a) for a purpose allowed in that zone (applicable to special exceptions), or
 - (b) as permitted by the dimensional requirements of this ordinance (applicable to variations);
- (2) that the plight of the owner is due to unique circumstances of the land for which the variance or special exception is sought; and
- (3) that the use to be authorized by the variance will not alter the essential character of the locality.

UDO SECTION 4.18: Variance

In certain circumstances, a Variance from the dimensional requirements (i.e. height, setbacks, square footage) of this ordinance may be granted if the applicant can prove that because of physical constraints of the property involved, he is not able to build the same type of structure that other persons with the same zoning classification can build. Variations for uses permitted will not be considered in as much as "use Variations" are not legal in the State of Mississippi.

Most Variations must be granted by the City Council; however, certain minor Variations may be granted by the Economic Development Director in accordance with *Section 4.18.3* below.

4.18.1 Who May Initiate

A request for a Variance may be initiated by the property owner or agent of the owner provided that said property has not been denied a previous request for a Variance for the same property or portion of property within the past twelve (12) months.

4.18.2 Application for Variance

Applications for a Variance (from dimensional requirements) may be filed on the appropriate application available from the Economic Development/Planning Department and shall include all requested information, attachments and submittals:

4.18.3 Administrative Variances

The following dimensional variances may be granted by the Economic Development Director at his/her discretion (Note: Within the COR, Corridor Overlay District, applicants shall be required to mitigate a requested dimensional variance in accordance with the Tier Land Use Provisions in Section 5.11):

- A. 30% of required off-street parking spaces and/or
- B. 30% of required setbacks from property lines

4.18.4 Criteria for Approval

The Variance application shall demonstrate the following:

- A. That special conditions and circumstances exist which are peculiar to this particular site (lot or parcel), structure or building involved and which are not applicable to other sites (lots or parcels) or structures or buildings in the same district;
- B. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the provisions of this Ordinance;
- C. That the special conditions and circumstances do not result from actions of the applicant; and
- D. That granting the Variance requested will not confer upon the applicant any special privilege that is denied by this Ordinance to other similar sites (lots or parcels) structures or buildings in the same district.

RECOMMENDATION & CONCLUSION:

If recommending approval, Planning Commission shall record that the evidence presented meets all "Criteria for Approval" from the UDO as listed above.

The Planning Commission may:

1. Recommend that City Council approve the variance request as presented;
2. Recommend that City Council approve the variance request with changes; or
3. Recommend that City Council deny variance request.

Chairman Jamison asked the applicant to present his case.

Roger Dulcich, the applicant, said he wanted to change the location of the fence that was approved in September. It would be the same fence, he just wanted to bring it out further to the property line.

Chairman Jamison asked Mr. Dulcich if he still intended to keep the angle at the corner.

Mr. Dulcich said he was going to keep the angle only it would be a little closer to the property line.

Commissioner Davis asked Mr. Ankerson if a fence that was over four feet (4') high, in a secondary front yard, was required to meet a twenty-five feet (25') setback per the UDO.

Mr. Ankerson said that secondary front yard requirements did not apply to fences, only for accessory structures.

Commissioner Ward asked if Mr. Dulcich was still going to use the same fencing as presented at the September meeting.

Mr. Dulcich replied that he was still using the same fencing.

Commissioner Davis noted the applicant's drawing showed the property line in front to be eighteen feet (18') from the road.

Mr. Dulcich said that was correct.

There were none in attendance speaking in opposition of the request.

ACTION TAKEN:

Chairman Jamison made a motion to recommend that the City Council approve the variance as presented and ensure that the same conditions as the previous variance still apply.

Commissioner Ward seconded the motion, and the following vote was recorded:

AYES: **Kay C. Jamison**
 Josh Ward
 Maurice Hudson
 William Davis

ABSENT: **DeAnna McManus**
 Chris Hoover
 Ricky Decoteau

Motion passed.

-
- 2. Consider a request for a Conditional Use-Major that would allow a Cigar Lounge with a Bar in a C-2 Community Commercial Zoning District. 3880 Gautier Vancleave Road, Suite #9, (GPC #24-53-CU)

Scott Ankerson, Planning Director, gave a brief overview of the case. He explained that the applicant was asking for a cigar lounge which would not require a Conditional Use but since he wanted to serve alcohol it would have to be considered a bar which does require a Conditional Use.

REQUEST:

The Planning Department has received a request from Josh Rose and Courtney Sangster dba Voodoo Cigar Lounge, LLC for a Conditional Use-Major that would allow a Cigar Lounge with a Bar in a C-2 Community Commercial Zoning District at 3880 Gautier Vancleave Road, Suite #9. PID #82435010.050 (GPC #24-53-CU) The application fee of \$250 was paid on October 30, 2024. All public notice requirements have been met.

BACKGROUND:

The request property is zoned C-2 Community Commercial.

1. Location: 3880 Gautier Vancleave Road, Suite #9, PID #82435010.050 (See Exhibit A)
2. General features of the proposed project:
Total Area: Approximately 1.87 Acres
3. Existing Zoning – C-2 Community Commercial (See Exhibit B)
4. Existing Land Use – Commercial – Retail (See Exhibit C)
5. Comprehensive Plan Future Land Use Designation – Low Impact Commercial (See Exhibit D)

DISCUSSION:

The following addresses the review criteria for a Major Conditional Use outlined in Section 4.17.5 of the UDO.

1. Is the proposed use listed in the list of possible Conditional Uses in the particular Zoning District?

Applicant Response: Yes.

Staff Finding: Yes. Bar or Tavern is listed as a Conditional Use-Major in a C-2 Community Commercial District.

2. Describe how the project is compatible with the character of development in the vicinity relative to (a) density, bulk and intensity of structures, (b) parking, and (c) other uses. Please attach parking plan, site plan, architectural rendering or other plans.

Applicant Response: Google image attached. No changes proposed.

Staff Finding: The proposed use is allowed in a C-2 zoning district with a Major Conditional Use. Special conditions may be imposed if deemed necessary to help the proposed use be more compatible with the character of development in the vicinity.

3. Will your project negatively affect neighboring property values or pose a real or perceived threat to citizens? Explain.

Applicant Response: No.

Staff Finding: There is no evidence to indicate the proposed use will negatively affect the property values or cause a detriment to the surrounding properties.

4. Will your project adversely affect vehicular or pedestrian traffic in the vicinity? Explain.

Applicant Response: No. We hope to bring more traffic from the public that will benefit surrounding business.

Staff Finding: There is no evidence that the proposed use will have any adverse effect on vehicular or pedestrian traffic.

5. Can the proposed use be accommodated by existing or proposed public services and facilities including, but not limited to, water, sanitary sewer, streets, drainage, police and fire protection, and schools?

Applicant Response: Yes. All current utilities and public services are able to accommodate.

Staff Finding: The proposed use can be accommodated by existing public services and facilities.

6. Is the proposed use in harmony with the Comprehensive Plan? Explain how.

Applicant Response: We hope to add an additional hospitality based business to our City of Gautier.

Staff Finding: The Comprehensive Plan calls out "Low Impact Commercial" for future land use of this property.

7. Does the proposed use pose a hazardous, detrimental, or disturbing affect, either real or perceived, to present surrounding land uses due to noises, glare, smoke, dust, odor, fumes, water pollution, vibration, electrical interference, or other nuisances? Explain.

Applicant Response: Smoke eaters to be installed in order to assist in alleviating lingering cigar smoke.

Staff Finding: There is no evidence that the proposed use poses a hazardous, detrimental, or disturbing effect to present surrounding uses.

8. Does the use conform to all district regulations for the applicable district in which it is located, or have other provisions been provided for? Explain.

Applicant Response: Yes.

Staff Finding: The proposed use will conform to all current district regulations.

DETERMINATION OF APPLICABLE LAW:

1. The UDO defines conditional uses as specific uses which are enumerated in each zoning district and which because of their nature are not allowed by right but may be allowed after the required review process. The City may specify certain conditions as necessary to make the use compatible with other uses in the same district. Conditional uses are issued for uses of land and uses designated "Conditional Uses-Major" are transferable from one (1) owner of land to another.

The UDO further defines Conditional Uses-Major as uses that are not allowed by right but require a recommendation by the Planning Commission and the approval of the City Council. Additionally, if the conditional use is transferred to a new owner, the new owner must submit a letter to the Planning Director agreeing to the current terms and condition.

2. Conditional Uses-Major requires a public hearing before the Planning Commission and approval by the City Council (Section 4.14 of the UDO).

RECOMMENDATION & CONCLUSION:

If recommending approval, Planning Commission shall record that the evidence presented meets the "Criteria for Approval" from the UDO as listed above.

The Planning Commission may:

1. Recommend that City Council approve the Conditional Use-Major
2. Recommend that City Council approve the Conditional Use-Major with changes;
or
3. Recommend that City Council deny the Conditional Use-Major.

Chairman Jamison asked the applicant to present the case.

Josh Rose, one of the applicants, said they are wanting to have a cigar lounge with a bar. He said the total area of the suite is about 1000 square feet with about 250 square feet of that being upstairs. They are looking to do a four person “belly up” bar with a limited drink menu. Each drink would accompany a specific cigar, like a pairing. This would allow people to come in and lounge and have their cigars with a drink. Mr. Rose said he thought the ATF and ABC would only allow them to be open until 10:00 PM. He said because they would be in a resort area, they might have different hours. Once ABC and ATF make their inspections, they will tell him what the restrictions on hours of operation will be.

Chairman Jamison asked if there would be any kind of music or bands.

Mr. Rose said there would be no bands, no pool tables, no dart boards, no foosball tables. Nothing of that nature.

Commissioner Davis stated that the Fire Department would have a limit on their capacity. He asked if Mr. Rose knew the capacity limit for the space.

Mr. Rose said he thought the limit was about 56 people, but there was no way they could sit that many. He thought their maximum would be about 22 people.

Chairman Jamison asked if there would be tables upstairs also.

Mr. Rose said they were going to have a larger round table upstairs with nice chairs geared more towards meetings.

Commissioner Davis asked what Mr. Rose how he would handle it if they were full, with 22 people, and others were wanting to come in. Would he turn them away or what?

Mr. Rose said if that were to start happening, they would probably have a waiting list or reservation list.

Commissioner Davis clarified that he was wondering if they would have people hanging around outside waiting for a seat if the lounge was full.

Mr. Rose said that would not happen.

Commissioner Hudson said he was concerned with the parking. He asked if the parking for the lounge would work with the other businesses there.

Mr. Rose said there was overflow parking just to the south of the space he would be located in.

Chairman Jamison asked what time Mr. Rose planned to open the cigar lounge. She noted that the other business usually close around 5:00 or 6:00 PM.

Mr. Rose said he planned to open around 3:00 PM.

Commissioner Ward said his biggest concern was whether there were any letters sent to the city in objection to the request.

Babs Logan, Planning Technician, advised that she had not received any objections or questions regarding the request.

Mr. Ankerson asked if letters went to just the property owner or did they also go to the separate renters in the shopping centers.

Ms. Logan said that letters were sent to the owner of the shopping center and everyone within 250 feet of the property, which included many residences in the area. They were not sent to the individual businesses within the shopping center. The UDO only requires that notification be sent to property owners listed on the Jackson County Mapping Website.

Commissioner Ward asked what the plan was for ventilation because he has been places with cigar shops next door and the smoke blends over to the other businesses. He asked how Mr. Rose planned to stop that from happening.

Mr. Rose said the way that you mitigate that correctly is with a smoke eater. This is a filtration system that utilizes multistage filtration and UV lights, like what you would find in a hospital to stabilize the air. The cigar smoke stays within the lounge. It is pulled into the unit, filtered, and expelled back into the building. This is not generally a requirement for a cigar lounge, but the owner of the building is requiring something to take care of the smoke from the cigars.

Commissioner Ward asked Mr. Ankerson if there were any ventilation requirements for the smoke absorber.

Mr. Ankerson said Mr. Rose would have to turn in mechanical plans that would show what kind of ventilation was needed per his engineer.

Chairman Jamison asked if he planned to be open 7 days a week and would he allow cigarette smoking besides the cigars.

Mr. Rose said he did not plan on being open 7 days a week. It would probably be closed on Sundays and Mondays. He said he didn't plan on allowing cigarette smoking. Most people don't go to a cigar lounge unless they plan on smoking cigars because it is a very traditional, old-school kind of thing, and you usually smoke a pipe or cigars.

Chairman Jamison asked about employees other than bartenders. She also asked if there would be security or cameras.

Mr. Rose said there would just be a bartender, and there would absolutely be cameras.

Commissioner Hudson asked Mr. Ankerson what the rule was about leaving a bar with alcohol in a cup, etc.

Mr. Ankerson said the Council had just approved for this to be a Leisure District. He said there are regulations as to what you can leave with. It can't be in a glass, and it can only be a certain number of ounces. Also, most places are not going to want to let you in with something you bought at another establishment. He advised that the Minutes from the last Council meeting have all the regulations for the Leisure District if anyone wanted to see exactly what they were.

Mr. Rose said as far as leaving his establishment with drinks, it would have to be something his employees would be comfortable with. He would definitely not want someone leaving his bar with a drink if they seemed drunk.

There were none in attendance speaking in opposition of the request.

ACTION TAKEN:

Commissioner Ward made a motion to recommend that City Council approve the Conditional Use – Major with the requirements that ventilation is met by a licensed engineer, and that smoke containment is in place.

Chairman Jamison seconded the motion, and the following vote was recorded:

AYES: **Kay C. Jamison**
 Josh Ward
 Maurice Hudson
 William Davis

ABSENT: **DeAnna McManus**
 Chris Hoover
 Ricky Decoteau

Motion passed.

GENERAL DISCUSSION

A. PREVIOUS CASE UPDATES

Mr. Ankerson advised Commissioners that City Council had approved both cases from the November meeting.

B. PERMIT & TRC REPORT

Mr. Ankerson told Commissioners the November monthly report was not completed in time for the meeting and would be emailed to them upon completion.

Commissioner Ward made a motion to adjourn the meeting.

Commissioner Hudson seconded the motion, and the following vote was recorded:

AYES: Kay C. Jamison
Josh Ward
Maurice Hudson
William Davis

ABSENT: DeAnna McManus
Chris Hoover
Ricky Decoteau

Motion Passed.

APPROVED BY:

Scott Ankerson
Planning Director/Building Official

DATE: _____

Kay C. Jamison, Chairman
Gautier Planning Commission

DATE: _____

BACKUP DOCUMENTATION

Gautier Planning Commission

Regular Meeting Agenda

December 5, 2024

GPC #24-52-VAR

1715 Piney Lane

VII. NEW BUSINESS

1. Consider a request for a one-foot (1') variance to fence height in a front yard in a R-1 Low Density Single-Family Residential Zoning District. 1715 Piney Lane, (GPC #24-52-VAR)

**CITY OF GAUTIER
STAFF REPORT**

To: Chairman and Members, Planning Commission

From: Scott Ankerson, Planning Director

Date: November 19, 2024

Subject: Consider a request for a one-foot (1') variance to fence height in a front yard in a R-1 Low Density Single-Family Residential Zoning District at 1715 Piney Lane, (GPC #24-52-VAR)

REQUEST:

The Planning Department has received a request from Roger Dulcich for a one-foot (1') variance to fence height in a front yard in a R-1 Low Density Single-Family Residential Zoning District at 1715 Piney Lane, PID #85440148.000 (GPC #24-52-VAR). The application fee of \$175 was paid on October 18, 2024. All public notice requirements have been met.

BACKGROUND:

On September 17, 2024, the City Council approved a one-foot (1') variance to fence height requirements in a front yard for the applicant. The applicant would like to change the location of the fence that was approved in September and place it closer to the front and secondary front property lines than was originally approved. Per the Unified Development Ordinance (UDO), fences shall not exceed four feet in height within a designated front yard. The applicant will need a 1' variance to fence height in a front yard.

DISCUSSION:

The applicant is asking for a one-foot (1') variance to fence height in a front and secondary front yard. Although he was previously approved for a one-foot (1') height variance for a fence in his front and secondary front yard, the approval was based on the location presented at the September meetings of the Planning Commission and City Council.

DETERMINATION OF APPLICABLE LAW:

The Unified Development Ordinance (UDO) defines **Variations** as:

A Variance is a relaxation of the terms of the Unified Development Ordinance where such Variance will not be contrary to the public interest and where, owing to conditions peculiar to the property, a literal enforcement of the Ordinance would result in an unnecessary or undue hardship. As used in this Ordinance, a Variance is authorized only for height, area and size of structure, or size of yards, separation of uses, open spaces, off-street parking spaces and some subdivision of property. The establishment or expansion of a use not permitted shall not be allowed by Variance.

The UDO defines **Hardship** as:

Hardship means the unnecessary hardship that would result from a failure to grant the requested variance or special exception. An unnecessary hardship exists if:

- (1) the land in question cannot yield a reasonable return if used only
 - (a) for a purpose allowed in that zone (applicable to special exceptions), or
 - (b) as permitted by the dimensional requirements of this ordinance (applicable to variances);
- (2) that the plight of the owner is due to unique circumstances of the land for which the variance or special exception is sought; and
- (3) that the use to be authorized by the variance will not alter the essential character of the locality.

UDO SECTION 4.18: Variance

In certain circumstances, a Variance from the dimensional requirements (i.e. height, setbacks, square footage) of this ordinance may be granted if the applicant can prove that because of physical constraints of the property involved, he is not able to build the same type of structure that other persons with the same zoning classification can build. Variances for uses permitted will not be considered in as much as “use Variances” are not legal in the State of Mississippi.

Most Variances must be granted by the City Council; however, certain minor Variances may be granted by the Economic Development Director in accordance with *Section 4.18.3* below.

4.18.1 Who May Initiate

A request for a Variance may be initiated by the property owner or agent of the owner provided that said property has not been denied a previous request for a Variance for the same property or portion of property within the past twelve (12) months.

4.18.2 Application for Variance

Applications for a Variance (from dimensional requirements) may be filed on the appropriate application available from the Economic Development/Planning Department and shall include all requested information, attachments and submittals:

4.18.3 Administrative Variances

The following dimensional variances may be granted by the Economic Development Director at his/her discretion (Note: Within the COR, Corridor Overlay District, applicants shall be required to mitigate a requested dimensional variance in accordance with the Tier Land Use Provisions in Section 5.11):

- A. 30% of required off-street parking spaces and/or
- B. 30% of required setbacks from property lines

4.18.4 Criteria for Approval

The Variance application shall demonstrate the following:

- A. That special conditions and circumstances exist which are peculiar to this particular site (lot or parcel), structure or building involved and which are

not applicable to other sites (lots or parcels) or structures or buildings in the same district;

- B. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the provisions of this Ordinance;
- C. That the special conditions and circumstances do not result from actions of the applicant; and
- D. That granting the Variance requested will not confer upon the applicant any special privilege that is denied by this Ordinance to other similar sites (lots or parcels) structures or buildings in the same district.

RECOMMENDATION & CONCLUSION:

If recommending approval, Planning Commission shall record that the evidence presented meets all “Criteria for Approval” from the UDO as listed above.

The Planning Commission may:

- 1. Recommend that City Council approve the variance request as presented;
- 2. Recommend that City Council approve the variance request with changes; or
- 3. Recommend that City Council deny variance request.

ATTACHMENTS:

- 1. Applicant’s Exhibit 1 – Application
- 2. City’s Exhibit A – Location Map
- 3. City’s Exhibit B – Existing Zoning Map
- 4. City’s Exhibit C – Existing Land Use Map
- 5. City’s Exhibit D – Future Land Use Map

GAUTIER, MISSISSIPPI

PLANNING DEPARTMENT
PUBLIC HEARING APPLICATION

Public Hearing Number

24-52-VAR

<u>TO BE HEARD BY GAUTIER PLANNING COMMISSION:</u>		<u>FEE:</u>
Variance _____		\$176.00
*Includes \$1.00 filing fee per MS Code §25-60-5		

Name of Applicant: Roger Dulcich

Name of Business: _____ Phone: 541-441-4460

Property Address: 1715 Piney Lane Mailing Address (if Different): _____

E-Mail Address: RDULC007@yahoo.com

Reason for request, location and intended use of Property: change fence layout in
Front yard - 1' height variance

ATTACHMENTS REQUIRED AS APPLICABLE:

- x 1. Diagram of intended use, showing dimensions and distances of property, building with setbacks, parking spaces, entrances and exits.
- x 2. A detailed project narrative.
- na 3. Copy of protective covenants or deed restrictions, if any.
- na 4. Copies of approvals, or requests for approval, from other agencies, such as, but not limited to, the Mississippi State Department of Health, U.S. Army Corp of Engineers, Mississippi Department of Environmental Quality and Department of Marine Resources.
- x 5. Any other information requested by the Planning Director.

Signature of Applicant: Roger Dulcich Date of Application: 10/18/24

FOR OFFICE USE ONLY	
Date Received <u>10/18/24</u>	Verify as Complete <u>Bals</u>
Fee Amount Received <u>176.00</u>	Initials of Employee Receiving Application <u>Bals</u>

VARIANCE

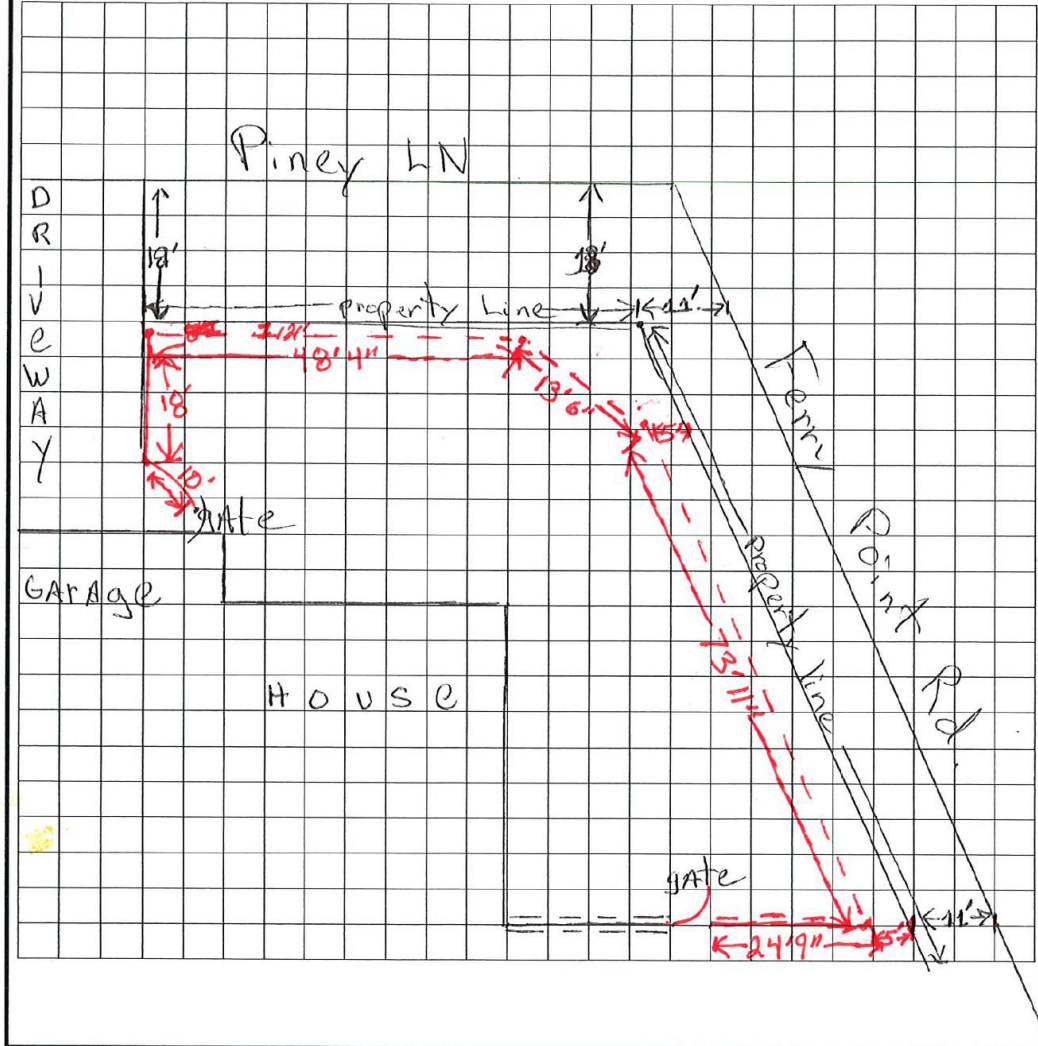
Criteria for Approval

1. What special conditions and circumstances exist which are peculiar to this particular site (lot or parcel), structure or building involved and which are not applicable to other sites (lots or parcels), or structures or buildings in the same district? *none*
2. Are these special conditions and circumstances a result of your actions? Explain.
no
3. How will the literal interpretation of the provisions of this Ordinance deprive you of rights commonly enjoyed by other properties in the same district under the provisions of this Ordinance? Explain. *no*
4. Will the granting of the Variance requested confer upon you any special privilege that is denied by this Ordinance to other similar sites (lots or parcels), structures or buildings in the same district? Explain. *no*

NARRATIVE

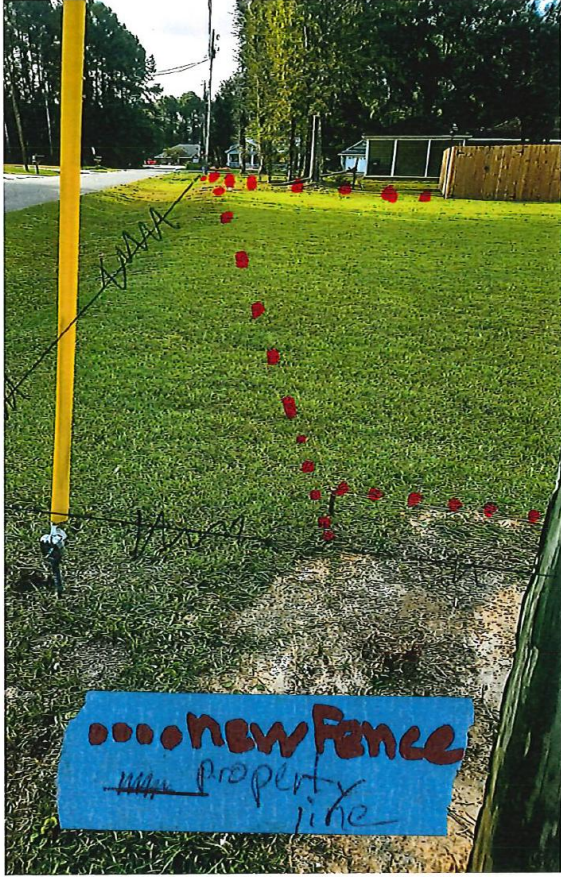
On August 26, 2024 my wife and I attended a Application Hearing #GPC 24-35-VAR for a 6' variance for side yard for an accessory building and a 1' variance for a fence post height in my front yard. On Sept 5th our motion for these 2 items was approved. I would like to change the fence layout in my front yard according to plan in this paperwork. It would be the same fence being built just different location.

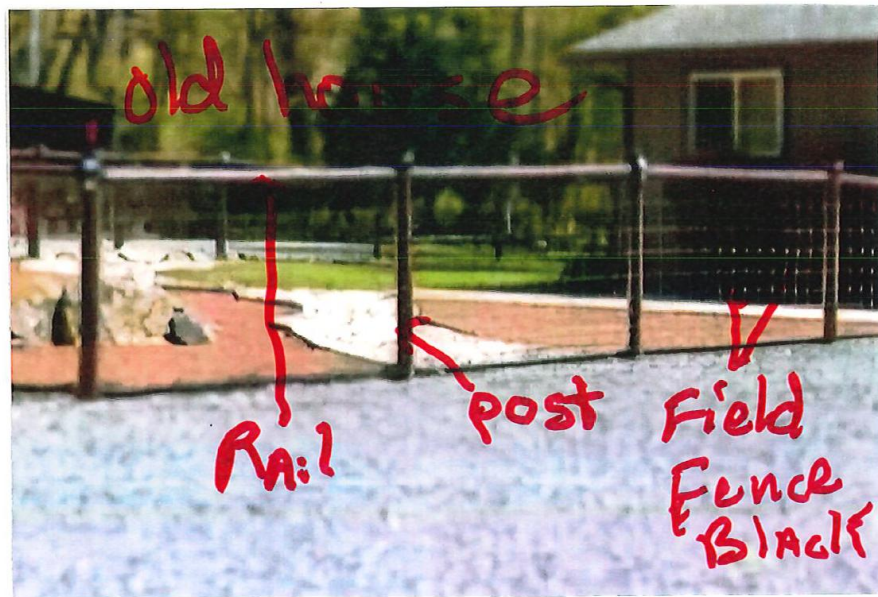
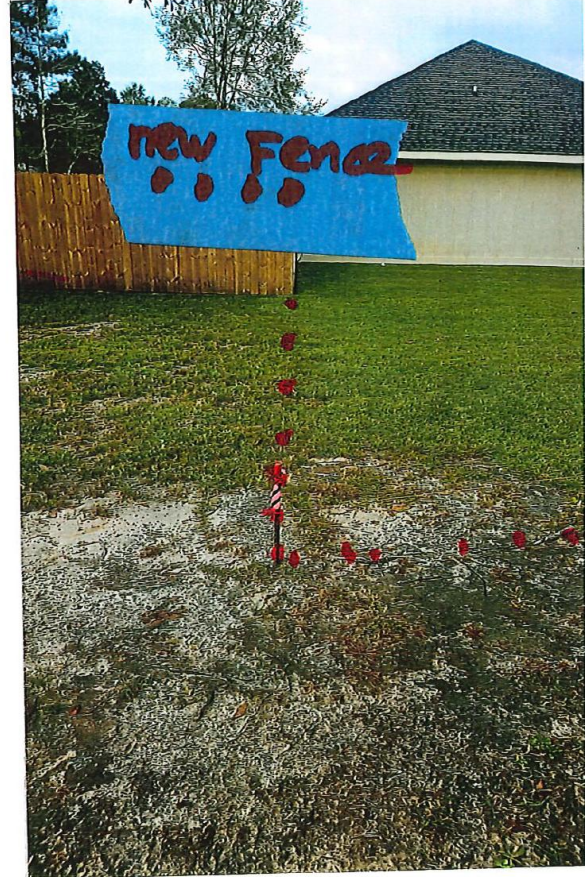
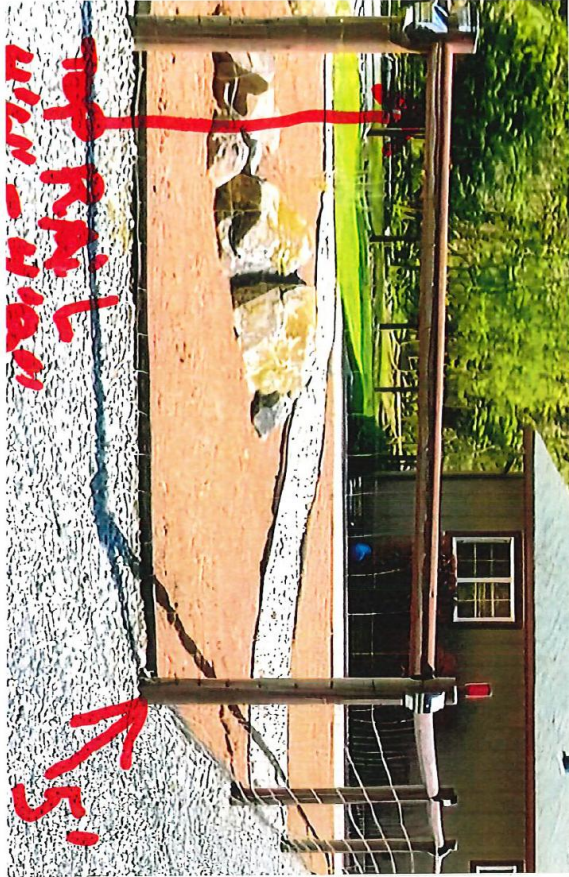
DIAGRAM



- property line
- new fence post & rail
- - - existing 6' fence
-)) gate

New Fence Layout

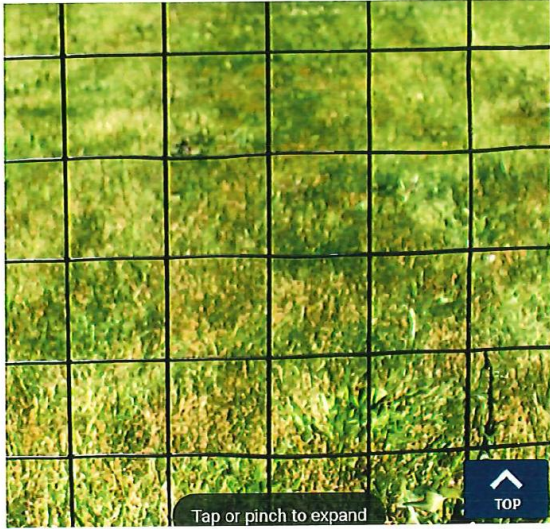




5' x 100' Welded Wire Fence- 12.5 ga. galvanized steel core; 10.5ga after Black PVC- Coating, 4" x 4" Mesh

In Stock
& Ready To Ship!

User Rating Avg.
★★★★★
6 Reviews



Tap or pinch to expand

★★★★★ (+/8K)

Search

Waveland Lowe's
Open until 9 PM

Delivery to
39553

Building Supplies / Fencing & Gates / Wood Fencing / Wood

Trending Now

Severe Weather 3-3/4-in x 6-1/2-ft
Pressure Treated Pine Flat-top...

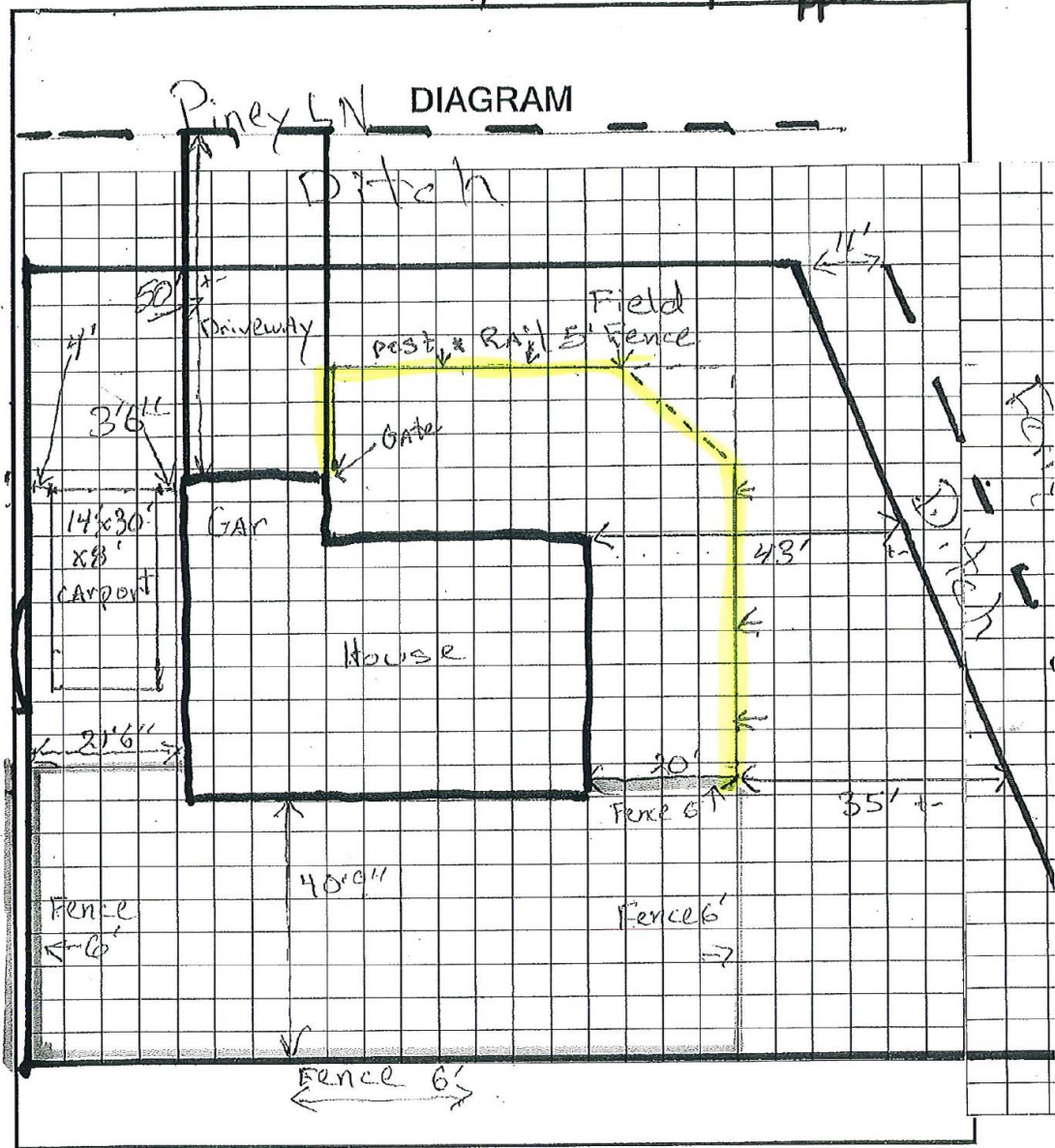
Item #202773 | Model #RP378T40N

Shop Severe Weather ★★★★★ 344

85440148.000 DULCICH DEBRA



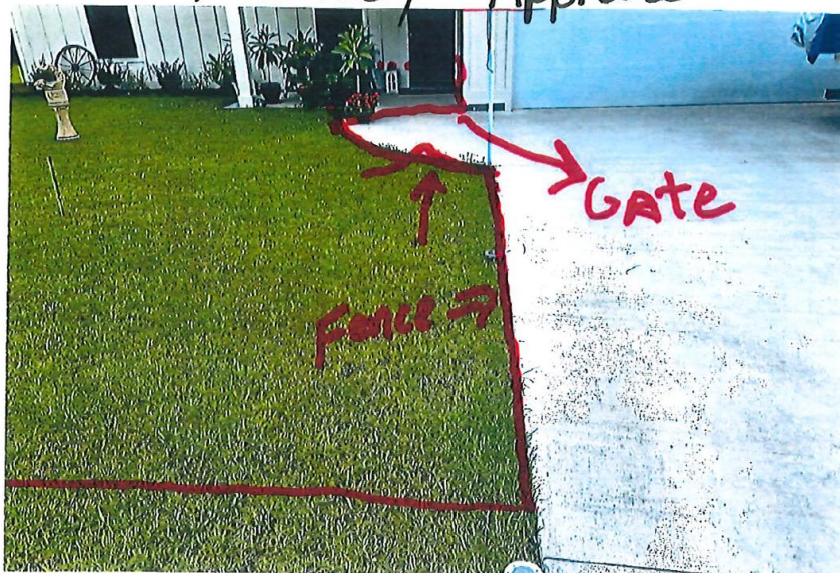
* Previously Approved *



Legend - each square represents 5'

)

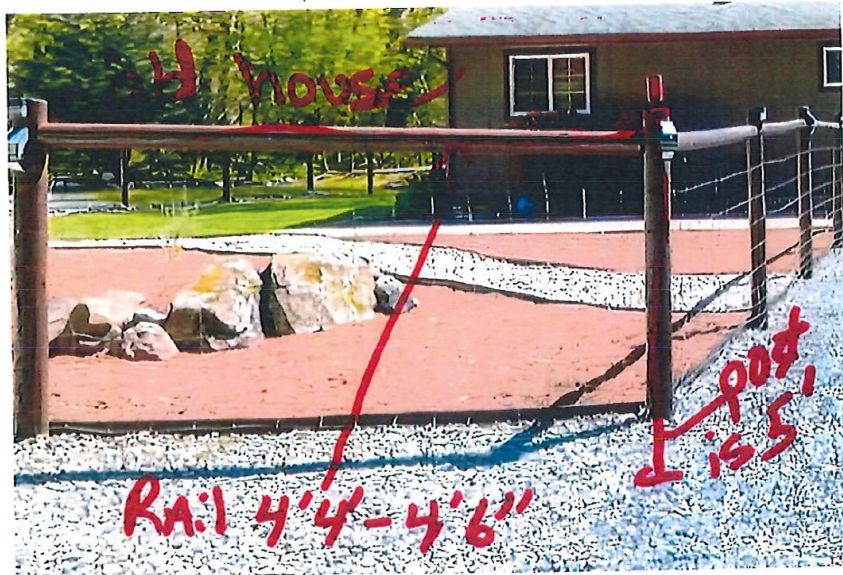
* Previously Approved *



* Previously Approved *



* Previously Approved *



★★★★★ (+78K)

Search

Waveland Lowe's
Open until 9 PM

Delivery to
39553

Building Supplies / Fencing & Gates / Wood Fencing / Wood

Trending Now



Severe Weather 3-3/4-in x 6-1/2-ft
Pressure Treated Pine Flat-top...

Item #202773 | Model #RP378T40N

Top Severe Weather ★★★★★ 344

* Previously Approved *

Brand: Tenax

4.4 ★★★★★ 888

Tenax 2A140075 Pet Fence Select Pet
Fence, Black, 4' x 330'



50+ bought in past month



Exhibit A Location Map

Prepared by:
City of Gautier
Planning Department



Exhibit B Existing Zoning

Prepared by:
City of Gautier
Planning Department

Legend

Zoning

ZONECODE

- AG
- C-1
- C-2
- C-3
- I-2
- MURC-1
- MURC-2
- MURC-MW
- PL
- PUD
- R-1
- R-2
- R-3
- RE
- TC

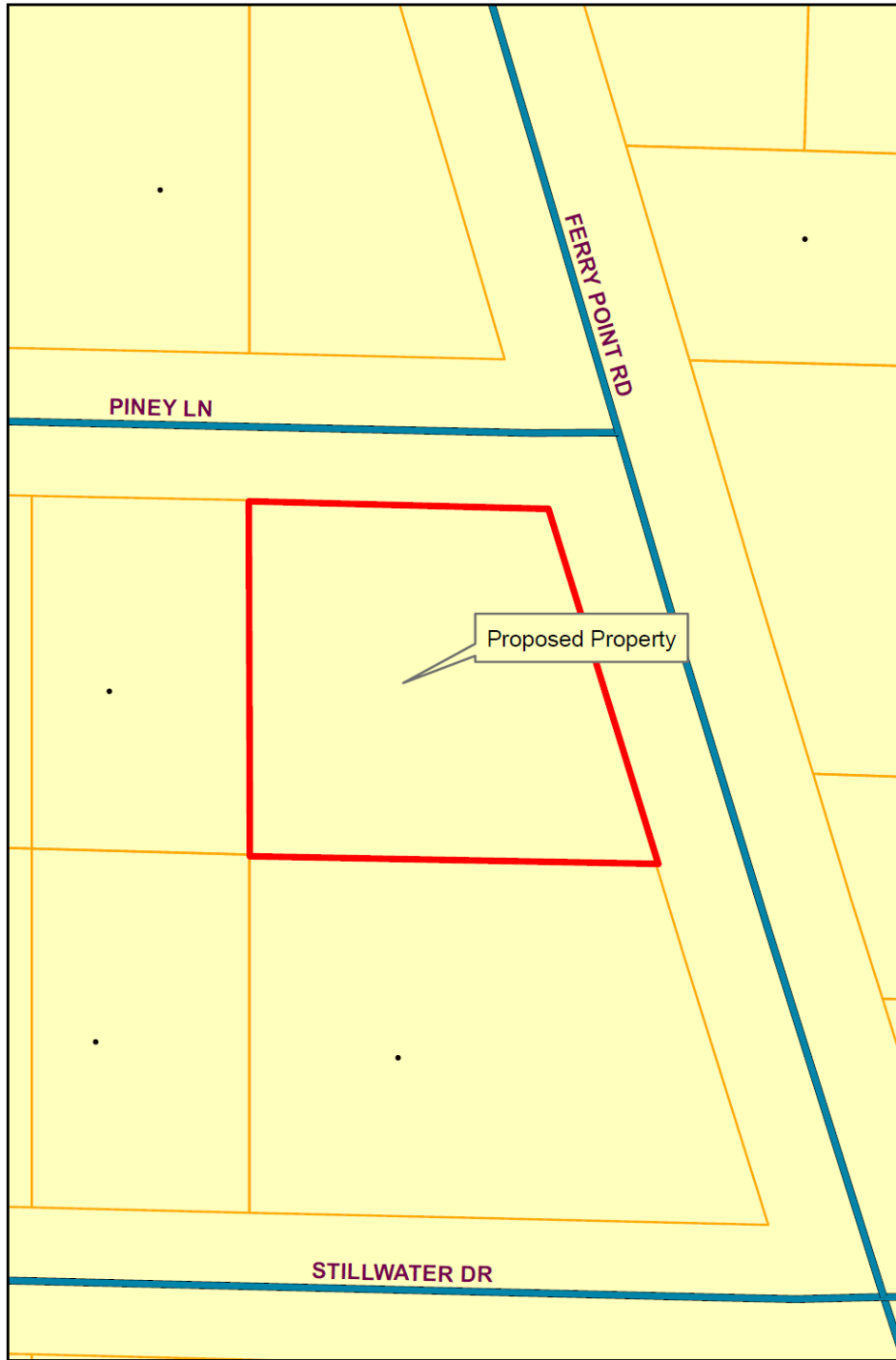


Exhibit C Existing Land-Use

Prepared by:
City of Gautier
Planning Department

Legend

EXISTING LAND USE

ELU_08

- commercial-retail
- conservation
- civic
- industrial
- marina/fish camps
- high density residential
- mobile home
- mobile home park
- medium density residential
- office
- recreation
- very low to low density residential
- utility
- vacant

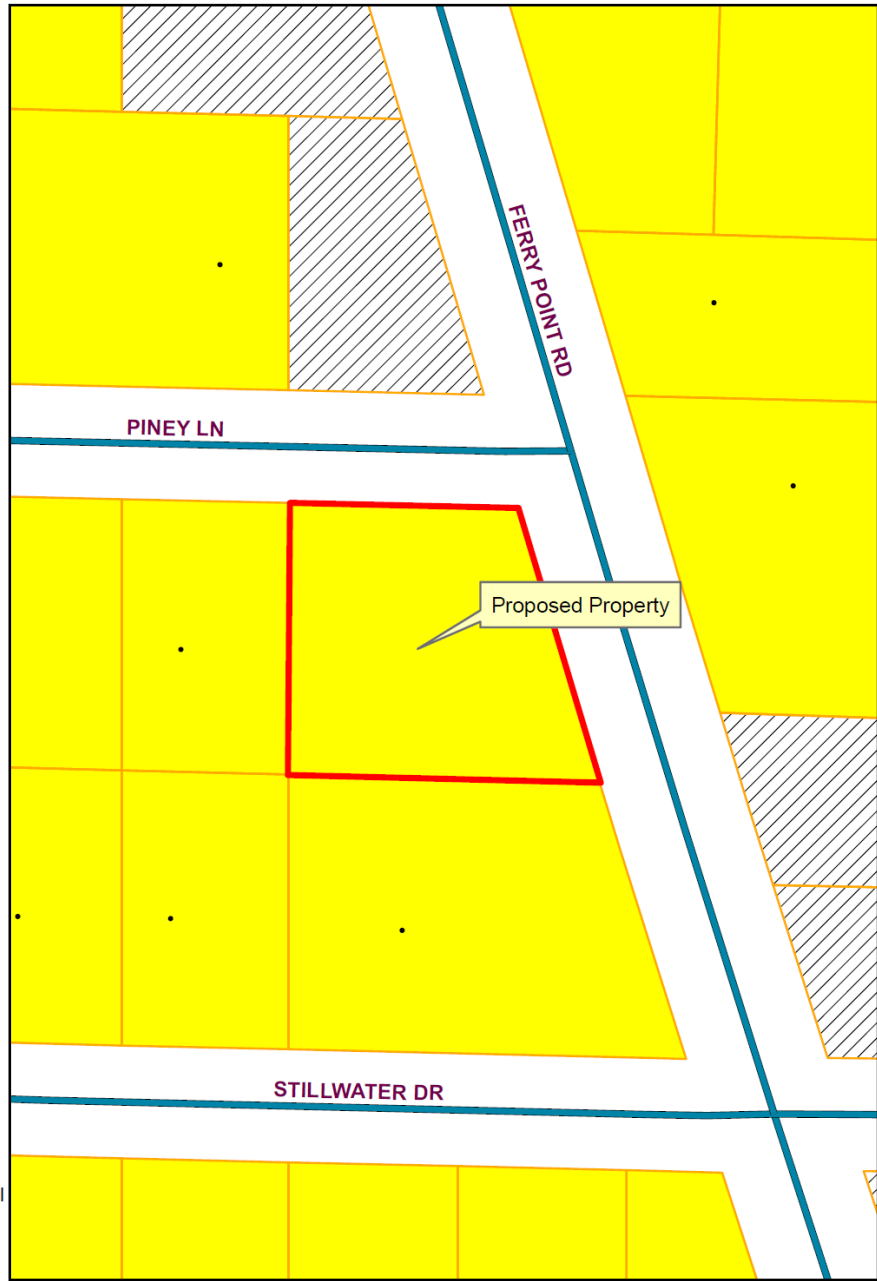


Exhibit D Future Land-Use

Prepared By:
City of Gautier
Planning Department

Legend

FUTURE LAND USE

FLU_Class

-
- Civic
- high impact commercial
- Conservation
- High Density Residential
- Industrial
- Low Density Residential
- Medium Density Residential
- Mobile Home Residential
- low impact Commercial
- Recreational
- recreational commercial
- Regional Scale Commercial
- mixed use residential
- Town Center
- Very Low Density Residential



Gautier Planning Commission

Regular Meeting Agenda

December 5, 2024

GPC #24-53-CU

Josh Rose & Courtney Sangster

dba

Voodoo Cigar Lounge, LLC

3880 Gautier Vancleave Road, Suite #9

VII. NEW BUSINESS

2. Consider a request for a Conditional Use-Major that would allow a Cigar Lounge with a Bar in a C-2 Community Commercial Zoning District. 3880 Gautier Vancleave Road, Suite #9, (GPC #24-53-CU)

**CITY OF GAUTIER
STAFF REPORT**

To: Chairman and Members, Planning Commission

From: Scott Ankerson, Planning Director

Date: November 20, 2024

Subject: Consider a request for a Conditional Use-Major that would allow a Cigar Lounge with a Bar in a C-2 Community Commercial Zoning District. 3880 Gautier Vanleave Road, Suite #9. (GPC #24-53-CU)

REQUEST:

The Planning Department has received a request from Josh Rose and Courtney Sangster dba Voodoo Cigar Lounge, LLC for a Conditional Use-Major that would allow a Cigar Lounge with a Bar in a C-2 Community Commercial Zoning District at 3880 Gautier Vanleave Road, Suite #9. PID #82435010.050 (GPC #24-53-CU) The application fee of \$250 was paid on October 30, 2024. All public notice requirements have been met.

BACKGROUND:

The request property is zoned C-2 Community Commercial.

1. Location: 3880 Gautier Vanleave Road, Suite #9, PID #82435010.050 (See Exhibit A)
2. General features of the proposed project:
Total Area: Approximately 1.87 Acres
3. Existing Zoning – C-2 Community Commercial (See Exhibit B)
4. Existing Land Use – Commercial – Retail (See Exhibit C)
5. Comprehensive Plan Future Land Use Designation – Low Impact Commercial (See Exhibit D)

DISCUSSION:

The following addresses the review criteria for a Major Conditional Use outlined in Section 4.17.5 of the UDO.

1. Is the proposed use listed in the list of possible Conditional Uses in the particular Zoning District?

Applicant Response: Yes.

Staff Finding: Yes. Bar or Tavern is listed as a Conditional Use-Major in a C-2 Community Commercial District.

2. Describe how the project is compatible with the character of development in the vicinity relative to (a) density, bulk and intensity of structures, (b) parking, and (c) other uses. Please attach parking plan, site plan, architectural rendering or other plans.

Applicant Response: Google image attached. No changes proposed.

Staff Finding: The proposed use is allowed in a C-2 zoning district with a Major Conditional Use. Special conditions may be imposed if deemed necessary to help the proposed use be more compatible with the character of development in the vicinity.

3. Will your project negatively affect neighboring property values or pose a real or perceived threat to citizens? Explain.

Applicant Response: No.

Staff Finding: There is no evidence to indicate the proposed use will negatively affect the property values or cause a detriment to the surrounding properties.

4. Will your project adversely affect vehicular or pedestrian traffic in the vicinity? Explain.

Applicant Response: No. We hope to bring more traffic from the public that will benefit surrounding business.

Staff Finding: There is no evidence that the proposed use will have any adverse effect on vehicular or pedestrian traffic.

5. Can the proposed use be accommodated by existing or proposed public services and facilities including, but not limited to, water, sanitary sewer, streets, drainage, police and fire protection, and schools?

Applicant Response: Yes. All current utilities and public services are able to accommodate.

Staff Finding: The proposed use can be accommodated by existing public services and facilities.

6. Is the proposed use in harmony with the Comprehensive Plan? Explain how.

Applicant Response: We hope to add an additional hospitality based business to our City of Gautier.

Staff Finding: The Comprehensive Plan calls out “Low Impact Commercial” for future land use of this property.

7. Does the proposed use pose a hazardous, detrimental, or disturbing affect, either real or perceived, to present surrounding land uses due to noises, glare, smoke, dust, odor, fumes, water pollution, vibration, electrical interference, or other nuisances? Explain.

Applicant Response: Smoke eaters to be installed in order to assist in alleviating lingering cigar smoke.

Staff Finding: There is no evidence that the proposed use poses a hazardous, detrimental, or disturbing effect to present surrounding uses.

8. Does the use conform to all district regulations for the applicable district in which it is located, or have other provisions been provided for? Explain.

Applicant Response: Yes.

Staff Finding: The proposed use will conform to all current district regulations.

DETERMINATION OF APPLICABLE LAW:

1. The UDO defines conditional uses as specific uses which are enumerated in each zoning district and which because of their nature are not allowed by right but may be allowed after the required review process. The City may specify certain conditions as necessary to make the use compatible with other uses in the same district. Conditional uses are issued for uses of land and uses designated “Conditional Uses-Major” are transferable from one (1) owner of land to another.

The UDO further defines Conditional Uses-Major as uses that are not allowed by right but require a recommendation by the Planning Commission and the approval of the City Council. Additionally, if the conditional use is transferred to a new owner, the new owner must submit a letter to the Planning Director agreeing to the current terms and condition.

2. Conditional Uses-Major requires a public hearing before the Planning Commission and approval by the City Council (Section 4.14 of the UDO).

RECOMMENDATION & CONCLUSION:

If recommending approval, Planning Commission shall record that the evidence presented meets the “Criteria for Approval” from the UDO as listed above.

The Planning Commission may:

1. Recommend that City Council approve the Conditional Use-Major
2. Recommend that City Council approve the Conditional Use-Major with changes;
or
3. Recommend that City Council deny the Conditional Use-Major.

ATTACHMENTS:

1. Applicant's Exhibit 1 – Application
2. City's Exhibit A – Location Map
3. City's Exhibit B – Existing Zoning Map
4. City's Exhibit C – Existing Land Use Map
5. City's Exhibit D – Future Land Use Map

GAUTIER, MISSISSIPPI
ECONOMIC DEVELOPMENT/PLANNING DEPARTMENT
CONDITIONAL USE APPLICATION

Public Hearing Number

24-53 CU

TO BE HEARD BY GAUTIER PLANNING COMMISSION:	FEE:
Conditional Use - Major _____	\$250.00
TO BE HEARD BY ECONOMIC DEVELOPMENT/PLANNING DIRECTOR:	FEE:
Conditional Use - Minor _____	\$250.00

Name of

Applicant: Josh Rose, Courtney Sangster

Name of Business: Voodoo Cigar Lounge, LLC Phone: 228-217-4148

Property Address: 3880 Gautier Vancleave Rd. Ste9 Mailing Address (if Different): _____

E-Mail Address: joshvoodoorose@gmail.com, csangster2086@gmail.com

Proposed Use Requiring Conditional Use: C-2 Cigar lounge with Bar. (Refer to Article V, UDO)

Proposed Location is: New Build Existing (with no modifications) Existing (with proposed modifications)

ATTACHMENTS REQUIRED AS APPLICABLE:

1. Answers to the Criteria for Approval (see attached).
2. Project Narrative (see attached).
4. Diagram of intended use (see attached).
- NA 4. Copy of protective covenants or deed restrictions, if any.
- NA 5. Copies of approvals, or requests for approval, from other agencies, such as, but not limited to, the Mississippi State Department of Health, U.S. Army Corp of Engineers, Mississippi Department of Environmental Quality and Department of Marine Resources.
- NA 6. Any other information requested by the Economic Development/Planning Director and/or members of the Technical Review Committee.
7. Owner's Consent form, if anyone other than 100% sole owner makes application (see attached).

Signature of Applicant(s): _____ Date of Application: _____

FOR OFFICE USE ONLY	
Date Received <u>10/30/24</u>	Verify as Complete <u>Bals</u>
Fee Amount Received <u>25.00</u>	Initials of Employee Receiving Application <u>BJ</u>

OWNERS CONSENT AND DESIGNATION OF AGENT - CONDITIONAL USE

I, Connie West, the fee simple owner(s) of the following described property:

Address: <u>3880 Gautier Vandevue Rd # 9</u>
Parcel ID No.:

hereby petition to the City of Gautier to *Grant a Conditional Use Major or Minor of* Cigar Lounge (Bar) (state proposed use from Article V of the Unified Development Ordinance) at the above reference property and affirm that Josh Rose (name of agent) is hereby designated to act as agent on my behalf to accomplish the above.

I certify that I have examined the application and that all statements and diagrams submitted are true and accurate to the best of my knowledge. Further, I understand this application; attachments and fees become part of the official records of the City of Gautier, MS, and are not returnable.

[Signature] (Owner's Signature) [Signature] (Owner's Signature)

Notary Information:
The foregoing instrument was acknowledged before me this 30th day of October, 2024 by Connie West who is personally known to me or has produced Ms. DL as identification and who did take an oath.

Ardie L Bang (Printed Name of Notary Public) Ardie L Bang (Signature of Notary Public)

Commission # 101387. My commission expires Feb 13, 2028
(Notary's Seal)



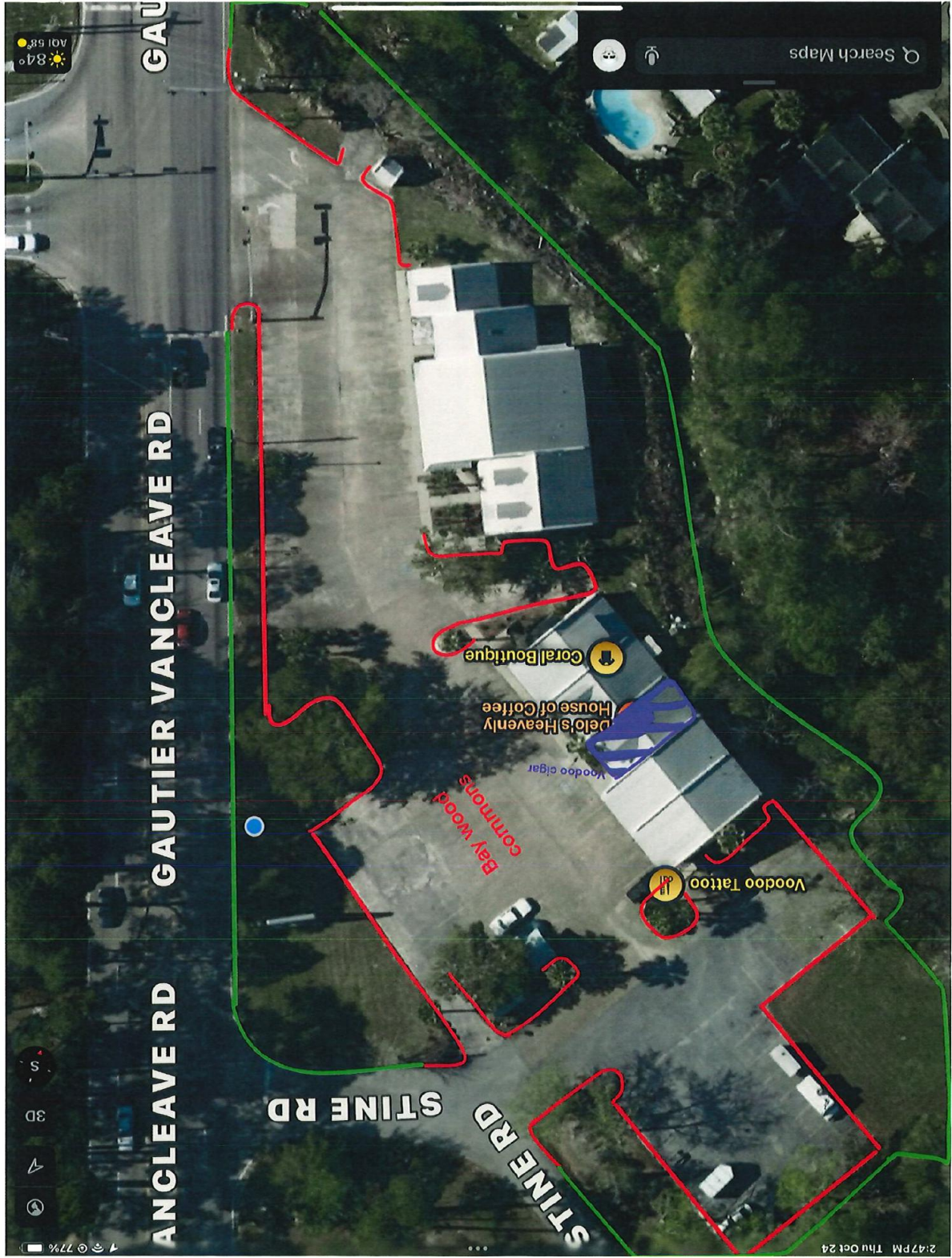
CONDITIONAL USE CRITERIA FOR APPROVAL - Complete either the Major Conditional Use section or Minor Conditional Use Section below. If more room is needed, answers can be provided on a separate sheet of paper.

MAJOR CONDITIONAL USE CRITERIA FOR APPROVAL

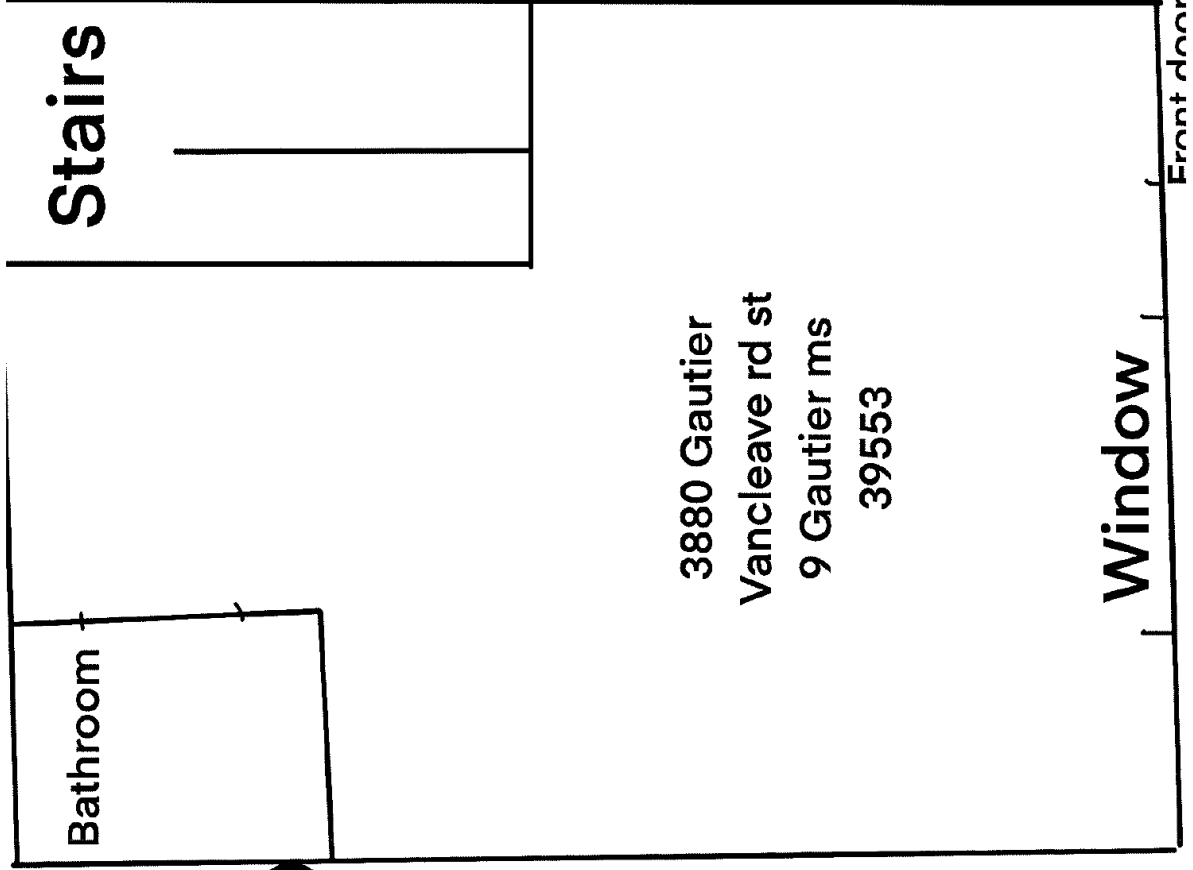
1. Is the proposed use listed in the list of possible Conditional Uses in the particular Zoning District?
Yes.
2. Please describe how the project is compatible with the character of development in the vicinity relative to (a) density, bulk and intensity of structures, (b) parking, and (c) other uses. Please attach parking plan, site plan, architectural rendering or other plans.
Google image attached. No changes proposed.
3. Will your project negatively affect neighboring property values or pose a real or perceived threat to citizens? Explain.
No. We hope to bring more traffic from the public that will benefit surrounding business.
4. Will your project adversely affect vehicular or pedestrian traffic in the vicinity? Explain.
No. There is no change anticipated. Parking lot provided is sufficient.
5. Can the proposed use be accommodated by existing or proposed public services and facilities including, but not limited to, water, sanitary sewer, streets, drainage, police and fire protection, and schools?
Yes. All current utilities and public services are able to accomodate.
6. Is the proposed use in harmony with the Comprehensive Plan? Explain how.
We hope to add an additional hospitality based business to our City of Gautier.
7. Does the proposed use pose a hazardous, detrimental, or disturbing affect, either real or perceived, to present surrounding land uses due to noises, glare, smoke, dust, odor, fumes, water pollution, vibration, electrical interference, or other nuisances? Explain.
Smoke eaters to be installed in order to assist in alleviating lingering cigar smoke.
8. Does the use conform to all district regulations for the applicable district in which it is located, or have other provisions been provided for? Explain. **Yes.**

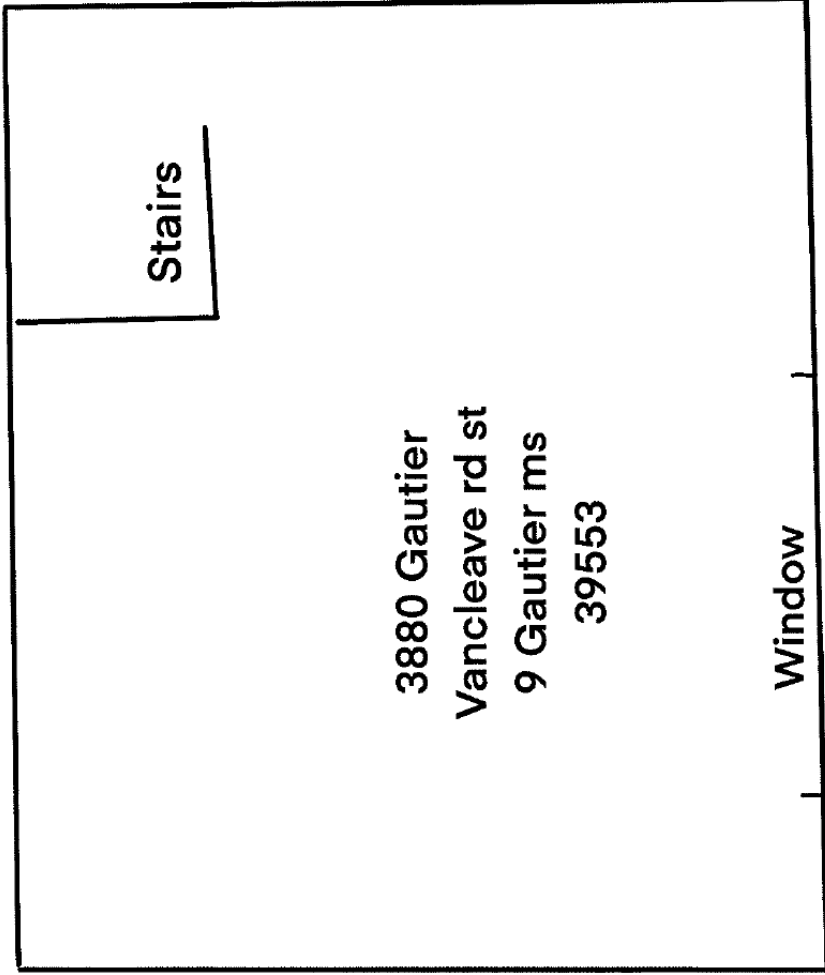
MINOR CONDITIONAL USE CRITERIA FOR APPROVAL

1. Is the proposed use substantially compatible with other uses in the area, including factors relating to the nature of its location, operation, building design, site design, traffic characteristics, and environmental impacts? Explain.
2. Will the proposed use be materially detrimental to the health, safety, and general welfare of the public or otherwise injurious to the environment or to the property or improvements within the area? Explain.
3. Is the proposed use consistent with the Comprehensive Plan? Explain how.
4. Is the proposed use in conformance with specific site location, development, and operation standards as required by this Ordinance? Explain.



30 feet long





19 feet

Second floor

Exhibit A Location Map

Prepared by:
City of Gautier
Planning Department



Exhibit B Existing Zoning

Prepared by:
City of Gautier
Planning Department

Legend

Zoning

ZONECODE

- AG
- C-1
- C-2
- C-3
- I-2
- MURC-1
- MURC-2
- MURC-MW
- PL
- PUD
- R-1
- R-2
- R-3
- RE
- TC

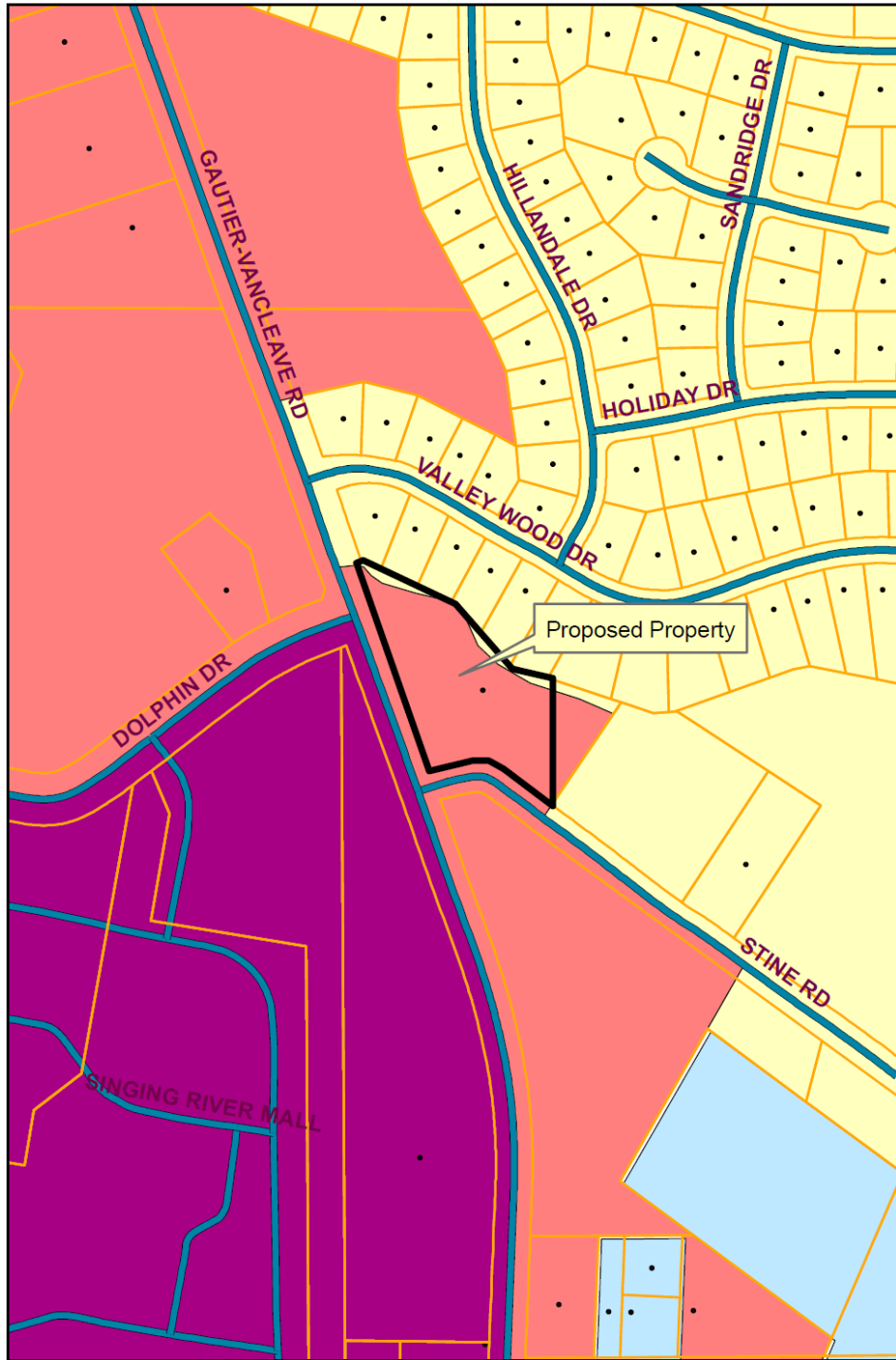


Exhibit C Existing Land-Use

Prepared by:
City of Gautier
Planning Department

Legend

EXISTING LAND USE

ELU_08

- commercial-retail
- conservation
- civic
- industrial
- marina/fish camps
- high density residential
- mobile home
- mobile home park
- medium density residential
- office
- recreation
- very low to low density residential
- utility
- vacant

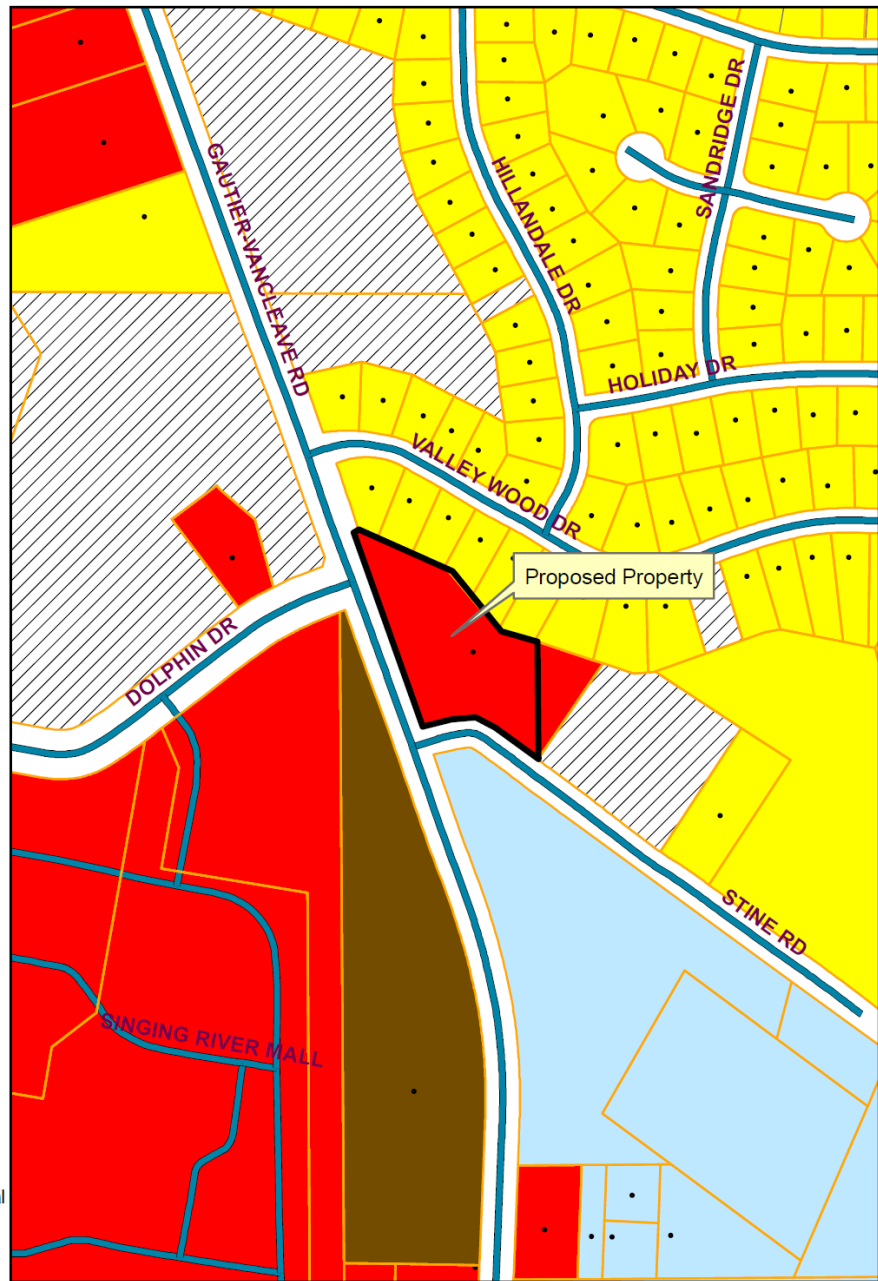


Exhibit D Future Land-Use

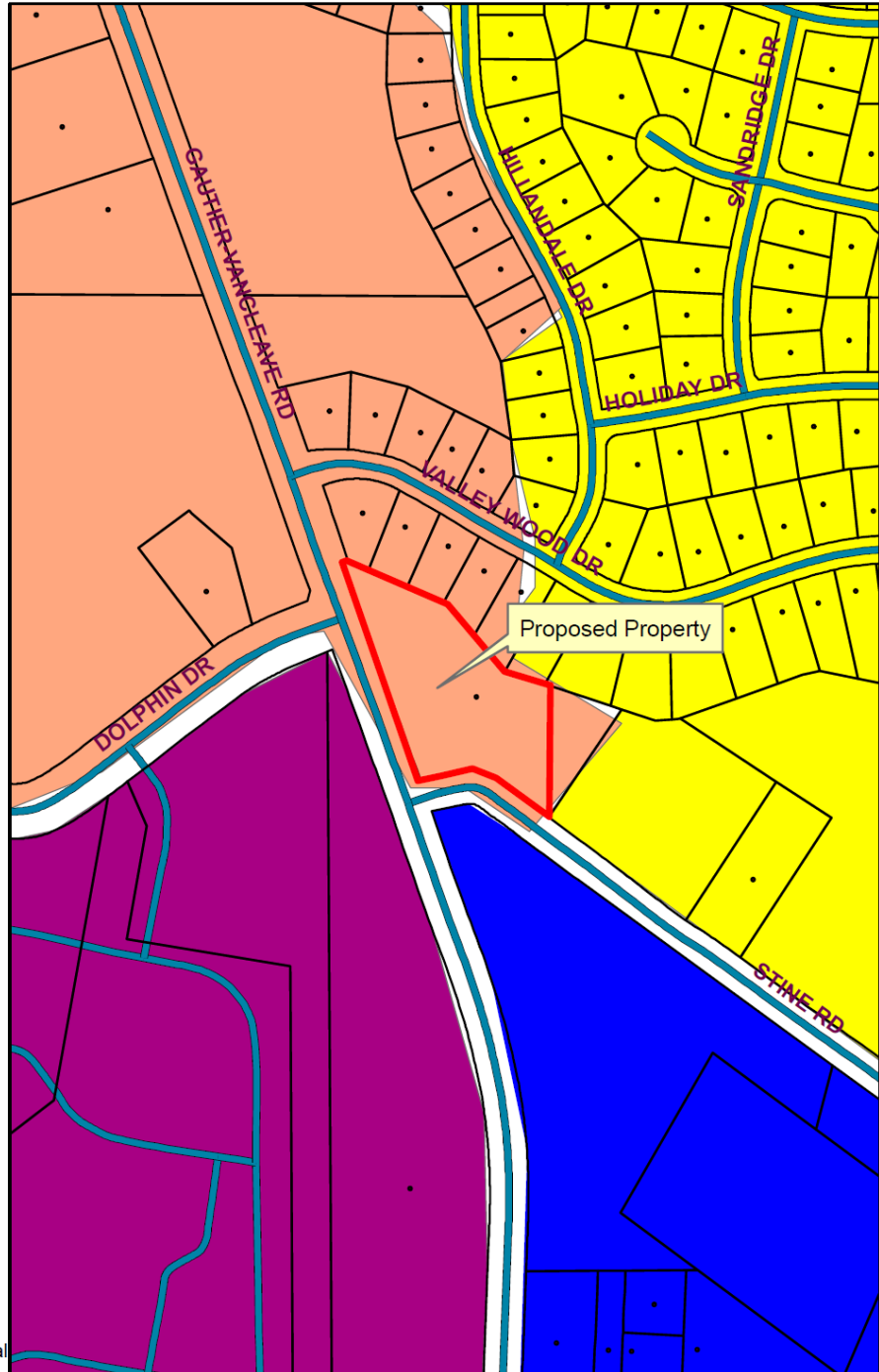
Prepared By:
City of Gautier
Planning Department

Legend

FUTURE LAND USE

FLU_Class

-
- Civic
- high impact commercial
- Conservation
- High Density Residential
- Industrial
- Low Density Residential
- Medium Density Residential
- Mobile Home Residential
- low impact Commercial
- Recreational
- recreational commercial
- Regional Scale Commercial
- mixed use residential
- Town Center
- Very Low Density Residential



**MARCH 6, 2025
GAUTIER, MISSISSIPPI**

BE IT REMEMBERED that a meeting of the Gautier Planning Commission of The City of Gautier, Mississippi, was held on March 6, 2025, at 5:30 PM in the Council Chambers of the Gautier Municipal Building at 3330 Highway 90, Gautier, Mississippi.

Commission Members present were: Chairman Kay C. Jamison, Commissioners Josh Ward, William Davis, and Ricky Decoteau. Also present were Scott Ankerson, Planning Director, Josh Danos, City Attorney (by phone), and Babs Logan, Planning Technician. Absent were Commissioners DeAnna McManus, Maurice Hudson, and Chris Hoover.

AGENDA

GAUTIER PLANNING COMMISSION

MARCH 6, 2025

5:30 P.M.

- I. CALL TO ORDER**
- II. PLEDGE OF ALLEGIANCE (VOLUNTEER)**
- III. APPROVAL OF AGENDA**
- IV. APPROVAL OF MINUTES (DECEMBER 5, 2024, & FEBRUARY 6, 2025)**
- V. PUBLIC COMMENTS
(MATTERS OF THE PLANNING COMMISSION NOT LISTED ON THE
AGENDA)**
- VI. OLD BUSINESS**
- VII. NEW BUSINESS**
 - 1. Consider a request for a fifty-one foot (51') variance to front yard setback requirements for an accessory building in a R-1 Low Density Single-Family Residential Zoning District. 2115 Poinciana Cove, PID #85414397.000, (GPC #25-06-VAR)
- VIII. GENERAL DISCUSSION**
 - A. PREVIOUS CASE UPDATES

B. PERMIT & TRC REPORTS

IX. ADJOURN

Commissioner Ward made a motion to approve the Agenda.

Commissioner Decoteau seconded the motion, and the following vote was recorded:

AYES: **Kay C. Jamison**
 Josh Ward
 William Davis
 Ricky Decoteau

ABSENT: **DeAnna McManus**
 Maurice Hudson
 Chris Hoover

Motion Passed

Chairman Jamison made a motion to table the December 5, 2024, and the February 6, 2025, minutes because there was not a quorum present from those meetings to vote on approval.

Commissioner Ward seconded the motion, and the following vote was recorded:

AYES: **Kay C. Jamison**
 Josh Ward
 William Davis
 Ricky Decoteau

ABSENT: **DeAnna McManus**
 Maurice Hudson
 Chris Hoover

Motion Passed.

PUBLIC COMMENTS (MATTERS OF THE PLANNING COMMISSION NOT LISTED ON THE AGENDA) - None

OLD BUSINESS - None

NEW BUSINESS

1. Consider a request for a fifty-one foot (51') variance to front yard setback requirements for an accessory building in a R-1 Low Density Single-Family Residential Zoning District. 2115 Poinciana Cove, PID #85414397.000, (GPC #25-06-VAR)

Scott Ankerson, Planning Director, gave a brief overview of the case. He explained that the applicant owns the property his house sits on and the adjacent lot where he wants to put his garage. Not only is the applicant's house in a cul-de-sac, but it also sits at an angle on the lot. Because of the angle of the front building line of the house, there is little room for the accessory building in the back corner of the adjacent lot.

Chairman Jamison stated that if the house were turned 45 degrees, then the front building line of the house would go straight across more and the location of the garage would be fine.

Mr. Ankerson agreed that if the house were turned a certain angle then it would probably be fine. He noted that the proposed location of the accessory building still meets the 25 foot setback from the front property line.

Chairman Jamison asked if there were any other rules since this was 2 lots being used for a house and an accessory building.

Mr. Ankerson advised that the Unified Development Ordinance (UDO) states that both lots must be owned by the same person.

REQUEST:

The Planning Department has received a request from Mike Blake for a fifty-one foot (51') variance to front yard setback requirements for an accessory building in a R-1 Low Density Single-Family Residential Zoning District at 2115 Poinciana Cove, PID #85414397.000. (GPC #25-06-VAR). The application fee of \$175 was paid on January 29, 2025. All public notice requirements have been met.

BACKGROUND:

The applicant would like to build a 24' x 35' garage on his adjoining lot. His home sits at the end of a cul-de-sac. Because of the angle of the front building line of the house, it would be hard for him to have the accessory building behind the front building line as required by the UDO for accessory buildings. The accessory building would still be 25'

from the front property line. The applicant is asking for a 51' variance to front yard setback requirements for an accessory building.

DISCUSSION:

The applicant is asking for a 51' variance to front yard setback requirements for an accessory building in a R-1 Low Density Single-Family Residential District. The applicant lives at the end of a cul-de-sac and his home sits at an angle. Because of the angle of the front building line of his house it would be hard for him to have the accessory building behind the front building line as required by the UDO.

DETERMINATION OF APPLICABLE LAW:

The Unified Development Ordinance (UDO) defines **Variations** as:

A Variance is a relaxation of the terms of the Unified Development Ordinance where such Variance will not be contrary to the public interest and where, owing to conditions peculiar to the property, a literal enforcement of the Ordinance would result in an unnecessary or undue hardship. As used in this Ordinance, a Variance is authorized only for height, area and size of structure, or size of yards, separation of uses, open spaces, off-street parking spaces and some subdivision of property. The establishment or expansion of a use not permitted shall not be allowed by Variance.

The UDO defines **Hardship** as:

Hardship means the unnecessary hardship that would result from a failure to grant the requested variance or special exception. An unnecessary hardship exists if:

- (1) the land in question cannot yield a reasonable return if used only
 - (a) for a purpose allowed in that zone (applicable to special exceptions), or
 - (b) as permitted by the dimensional requirements of this ordinance (applicable to variations);
- (2) that the plight of the owner is due to unique circumstances of the land for which the variance or special exception is sought; and
- (3) that the use to be authorized by the variance will not alter the essential character of the locality.

UDO SECTION 4.18: Variance

In certain circumstances, a Variance from the dimensional requirements (i.e. height, setbacks, square footage) of this ordinance may be granted if the applicant can prove that because of physical constraints of the property involved, he is not able to build the same type of structure that other persons with the same zoning classification can build. Variations for uses permitted will not be considered in as much as "use Variations" are not legal in the State of Mississippi.

Most Variations must be granted by the City Council; however, certain minor Variations may be granted by the Economic Development Director in accordance with *Section 4.18.3* below.

4.18.1 Who May Initiate

A request for a Variance may be initiated by the property owner or agent of the owner provided that said property has not been denied a previous request for a

Variance for the same property or portion of property within the past twelve (12) months.

4.18.2 Application for Variance

Applications for a Variance (from dimensional requirements) may be filed on the appropriate application available from the Economic Development/Planning Department and shall include all requested information, attachments and submittals:

4.18.3 Administrative Variances

The following dimensional variances may be granted by the Economic Development Director at his/her discretion (Note: Within the COR, Corridor Overlay District, applicants shall be required to mitigate a requested dimensional variance in accordance with the Tier Land Use Provisions in Section 5.11):

- A. 30% of required off-street parking spaces and/or
- B. 30% of required setbacks from property lines

4.18.4 Criteria for Approval

The Variance application shall demonstrate the following:

- A. That special conditions and circumstances exist which are peculiar to this particular site (lot or parcel), structure or building involved and which are not applicable to other sites (lots or parcels) or structures or buildings in the same district;
- B. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the provisions of this Ordinance;
- C. That the special conditions and circumstances do not result from actions of the applicant; and
- D. That granting the Variance requested will not confer upon the applicant any special privilege that is denied by this Ordinance to other similar sites (lots or parcels) structures or buildings in the same district.

RECOMMENDATION & CONCLUSION:

If recommending approval, Planning Commission shall record that the evidence presented meets all "Criteria for Approval" from the UDO as listed above.

The Planning Commission may:

1. Recommend that City Council approve the variance request as presented;
2. Recommend that City Council approve the variance request with changes; or
3. Recommend that City Council deny variance request.

Chairman Jamison asked the applicant to present his case.

Mike Blake, the applicant, said the lot slopes down 7.5' for drainage, so if he has to move the garage back 25' that would already be a 7.5' build up on the west end of the garage. He also wants to keep it further from the bayou because of hurricanes. He doesn't want to build it any closer to the house in case he decides to sell the property later. By not putting the garage on the property line, or closer to the house, he could sell either property with the structure on it without problems.

Mr. Ankerson explained that if Mr. Blake built the garage closer than 10' from the property line then he would be creating a non-compliant situation for later if he ever wanted to sell the lot. If he meets the setback requirements with the proposed structure, and he later decides he wants to sell this lot off separately, someone could buy the lot and convert the structure to a house by adding square footage and making sure the entire structure meets building codes. By building 10' from the side property line, the structure could be converted and still meet side setbacks.

Mr. Davis asked Mr. Ankerson if the accessory building would have to be converted into a residence if the lots were sold separately.

Mr. Ankerson said if the applicant were to sell the lot with just an accessory building, the new buyer would not be able to put power to the structure because it would be an accessory structure on a parcel without a primary structure. The new owner would have to submit plans for additional square footage and proof that the entire structure would meet codes.

Commissioner Ward noted that the proposed setback for the accessory structure basically lines up with the front of the neighbor's house, even though it comes in front of the applicant's front building line.

Mr. Blake said he spoke with the neighbor, and he has no problem with the proposed location of the garage. He said the neighbor would rather have the bayou view than a better road view.

There were none in attendance speaking in opposition of the request.

ACTION TAKEN:

Commissioner Ward made a motion to recommend that the City Council approve the variance based on the unique characteristics of the lot and position of the primary structure.

Commissioner Decoteau seconded the motion, and the following vote was recorded:

AYES: **Kay C. Jamison**
 Josh Ward
 William Davis
 Ricky Decoteau

**ABSENT: DeAnna McManus
Maurice Hudson
Chris Hoover**

Motion passed.

GENERAL DISCUSSION

A. PREVIOUS CASE UPDATES

Mr. Ankerson advised Commissioners that City Council had approved GPC 25-01-VAR for an accessory building but had denied both GPC 25-02-SE and GPC 25-03-VAR regarding a tiny home transitional living development and variances to square footage requirements for the development.

B. PERMIT & TRC REPORT

Mr. Ankerson advised the Commissioners that the February 2025 monthly report had not been completed and would be presented at the March meeting.

Commissioner Decoteau made a motion to recess the meeting until March 18.

Commissioner Ward seconded the motion, and the following vote was recorded:

**AYES: Kay C. Jamison
Josh Ward
William Davis
Ricky Decoteau**

**ABSENT: DeAnna McManus
Maurice Hudson
Chris Hoover**

Motion Passed.

APPROVED BY:

Scott Ankerson
Planning Director/Building Official

DATE: _____

Kay C. Jamison, Chairman
Gautier Planning Commission

DATE: _____

BACKUP DOCUMENTATION

Gautier Planning Commission

Regular Meeting Agenda

March 6, 2025

GPC #25-06-VAR

2115 Poinciana Cove

PID #85414397.000

VII. NEW BUSINESS

1. Consider a request for a fifty-one foot (51') variance to front yard setback requirements for an accessory building in a R-1 Low Density Single-Family Residential Zoning District. 2115 Poinciana Cove, PID #85414397.000, (GPC #25-06-VAR)

**CITY OF GAUTIER
STAFF REPORT**

To: Chairman and Members, Planning Commission

From: Scott Ankerson, Planning Director

Date: February 24, 2025

Subject: Consider a request for a fifty-one foot (51') variance to front yard setback requirements for an accessory building in a R-1 Low Density Single-Family Residential Zoning District at 2115 Poinciana Cove, PID #85414397.000. (GPC #25-06-VAR)

REQUEST:

The Planning Department has received a request from Mike Blake for a fifty-one foot (51') variance to front yard setback requirements for an accessory building in a R-1 Low Density Single-Family Residential Zoning District at 2115 Poinciana Cove, PID #85414397.000. (GPC #25-06-VAR). The application fee of \$175 was paid on January 29, 2025. All public notice requirements have been met.

BACKGROUND:

The applicant would like to build a 24' x 35' garage on his adjoining lot. His home sits at the end of a cul-de-sac. Because of the angle of the front building line of the house, it would be hard for him to have the accessory building behind the front building line as required by the UDO for accessory buildings. The accessory building would still be 25' from the front property line. The applicant is asking for a 51' variance to front yard setback requirements for an accessory building.

DISCUSSION:

The applicant is asking for a 51' variance to front yard setback requirements for an accessory building in a R-1 Low Density Single-Family Residential District. The applicant lives at the end of a cul-de-sac and his home sits at an angle. Because of the angle of the front building line of his house it would be hard for him to have the accessory building behind the front building line as required by the UDO.

DETERMINATION OF APPLICABLE LAW:

The Unified Development Ordinance (UDO) defines **Variances** as:

A Variance is a relaxation of the terms of the Unified Development Ordinance where such Variance will not be contrary to the public interest and where, owing to conditions peculiar to the property, a literal enforcement of the Ordinance would result in an unnecessary or undue hardship. As used in this Ordinance, a Variance is authorized only for height, area and size of structure, or size of yards, separation of uses, open spaces, off-street parking spaces and some subdivision of property.

The establishment or expansion of a use not permitted shall not be allowed by Variance.

The UDO defines **Hardship** as:

Hardship means the unnecessary hardship that would result from a failure to grant the requested variance or special exception. An unnecessary hardship exists if:

- (1) the land in question cannot yield a reasonable return if used only
 - (a) for a purpose allowed in that zone (applicable to special exceptions), or
 - (b) as permitted by the dimensional requirements of this ordinance (applicable to variances);
- (2) that the plight of the owner is due to unique circumstances of the land for which the variance or special exception is sought; and
- (3) that the use to be authorized by the variance will not alter the essential character of the locality.

UDO SECTION 4.18: Variance

In certain circumstances, a Variance from the dimensional requirements (i.e. height, setbacks, square footage) of this ordinance may be granted if the applicant can prove that because of physical constraints of the property involved, he is not able to build the same type of structure that other persons with the same zoning classification can build. Variances for uses permitted will not be considered in as much as “use Variances” are not legal in the State of Mississippi.

Most Variances must be granted by the City Council; however, certain minor Variances may be granted by the Economic Development Director in accordance with *Section 4.18.3* below.

4.18.1 Who May Initiate

A request for a Variance may be initiated by the property owner or agent of the owner provided that said property has not been denied a previous request for a Variance for the same property or portion of property within the past twelve (12) months.

4.18.2 Application for Variance

Applications for a Variance (from dimensional requirements) may be filed on the appropriate application available from the Economic Development/Planning Department and shall include all requested information, attachments and submittals:

4.18.3 Administrative Variances

The following dimensional variances may be granted by the Economic Development Director at his/her discretion (Note: Within the COR, Corridor Overlay District, applicants shall be required to mitigate a requested dimensional variance in accordance with the Tier Land Use Provisions in Section 5.11):

- A. 30% of required off-street parking spaces and/or
- B. 30% of required setbacks from property lines

4.18.4 Criteria for Approval

The Variance application shall demonstrate the following:

- A. That special conditions and circumstances exist which are peculiar to this particular site (lot or parcel), structure or building involved and which are not applicable to other sites (lots or parcels) or structures or buildings in the same district;
- B. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the provisions of this Ordinance;
- C. That the special conditions and circumstances do not result from actions of the applicant; and
- D. That granting the Variance requested will not confer upon the applicant any special privilege that is denied by this Ordinance to other similar sites (lots or parcels) structures or buildings in the same district.

RECOMMENDATION & CONCLUSION:

If recommending approval, Planning Commission shall record that the evidence presented meets all "Criteria for Approval" from the UDO as listed above.

The Planning Commission may:

- 1. Recommend that City Council approve the variance request as presented;
- 2. Recommend that City Council approve the variance request with changes; or
- 3. Recommend that City Council deny variance request.

ATTACHMENTS:

- 1. Applicant's Exhibit 1 – Application
- 2. City's Exhibit A – Location Map
- 3. City's Exhibit B – Existing Zoning Map
- 4. City's Exhibit C – Existing Land Use Map
- 5. City's Exhibit D – Future Land Use Map

GAUTIER, MISSISSIPPI
PLANNING DEPARTMENT
PUBLIC HEARING APPLICATION

Public Hearing Number

25-06-VAR

<u>TO BE HEARD BY GAUTIER PLANNING COMMISSION:</u>		<u>FEE:</u>
Zoning Change	_____	\$300.00
Major Development	_____	\$100.00
Variance	<u>✓</u>	\$175.00
Appeal to Staff Decision	_____	\$100.00

Name of Applicant: MIKE BLAKE
Name of Business: _____ Phone: 740-225-1737
Property Address: LOT-460-POINCIANA CV Mailing Address (if Different): _____
E-Mail Address: DEEANN BLAKE@LIVE.COM

Reason for request, location and intended use of Property: VARIANCE REQUEST DUE TO IF IT WAS BUILT PARALLEL TO HOUSE IT WOULD BE IN BAYOU

ATTACHMENTS REQUIRED AS APPLICABLE:

- 1. Diagram of intended use, showing dimensions and distances of property, building with setbacks, parking spaces, entrances and exits.
- 2. A detailed project narrative.
- _____ 3. Copy of protective covenants or deed restrictions, if any.
- _____ 4. Copies of approvals, or requests for approval, from other agencies, such as, but not limited to, the Mississippi State Department of Health, U.S. Army Corp of Engineers, Mississippi Department of Environmental Quality and Department of Marine Resources.
- _____ 5. Any other information requested by the Economic Development/Planning Director and/or members of the Technical Review Committee.

Signature of Applicant: Mike Blake Date of Application: 1-28-25

FOR OFFICE USE ONLY	
Date Received <u>1/29/25</u>	Verify as Complete <u>Bales/Scott</u>
Fee Amount Received <u>176.00</u>	Initials of Employee Receiving Application <u>Bales</u>

VARIANCE CRITERIA for APPROVAL – Please answer the questions below to establish that you meet the Criteria for Approval for a Variance. If more room is needed, answers can be provided on a separate sheet of paper.

- A. Do special conditions and circumstances exist which are peculiar to this particular site (lot or parcel), structure or building involved and which are not applicable to other sites (lots or parcels) or structures or buildings in the same district? If yes, please explain.

YES- WE ARE ASKING FOR THIS VARIANCE DUE TO THE FACT IT WOULD BE IMPOSSIBLE TO BUILD GARAGE ANY CLOSER TO WATER, LOT HAS A PRETTY GOOD SLOPE. WE ARE MEETING 25' SETBACK.

- B. Would the literal interpretation of the provisions of this Ordinance deprive the applicant (you) of rights commonly enjoyed by other properties in the same district under the provisions of this Ordinance? If yes, please explain.

NO

- C. Do the special conditions and circumstances result from actions of the applicant (you)?

NO

- D. Does granting the Variance requested confer upon the applicant (you) any special privilege that is denied by this Ordinance to other similar sites (lots or parcels) structures or buildings in the same district?

NO

NARRATIVE

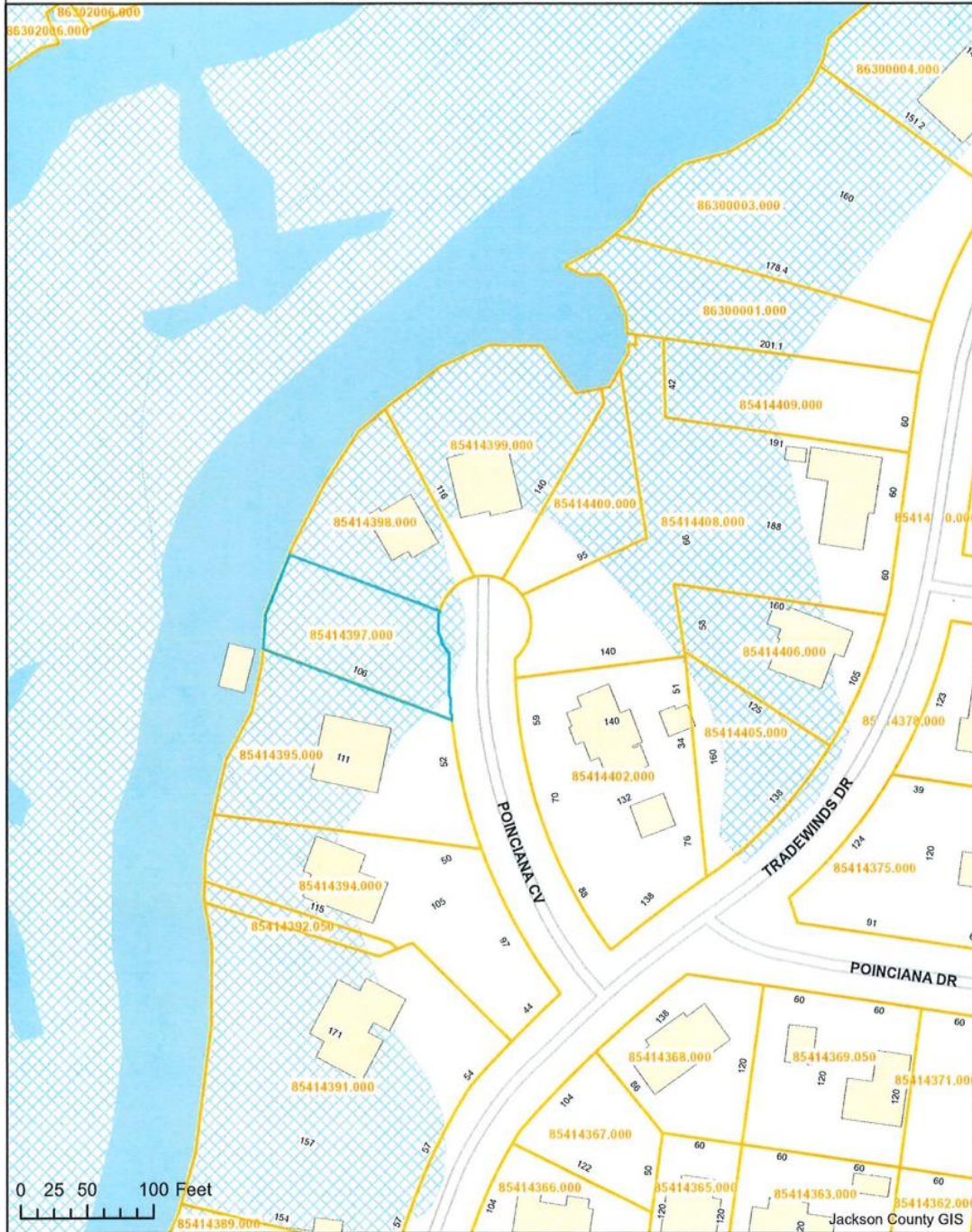
WE ARE ASKING FOR A VARIANCE BECAUSE
IT WOULD BE IMPOSSIBLE TO BUILD GARAGE
IN LINE (PARALLEL) TO EXISTING HOUSE
AS WE LIVE AT END OF A CUL DE SAC,
WE ARE STILL MEETING THE 25'
SET BACK FROM ROAD.

ONE OF THE REASONS WE WANT TO BUILD
A GARAGE IS TO ENHANCE THE
OVERALL LOOK OF THE NEIGHBORHOOD
BY STORING BOAT, LAWN BLOWERS,
KAYAKS, TRASH CANS, AND OTHER
ACCESSORIES THAT PEOPLE ACCUMULATE
THAT WOULD LOOK BETTER UNSEEN.

PLEASE. SEE PLOT
PLAN FOR DESCRIPTION

THANKS - MIKE

85414397.000 BLAKE MIKE W &



85414398.000 BLAKE MIKE W & DEANN



Exhibit A Location Map

Prepared by:
City of Gautier
Planning Department



Exhibit B Existing Zoning

Prepared by:
City of Gautier
Planning Department

Legend

Zoning

ZONECODE

- AG
- C-1
- C-2
- C-3
- I-2
- MURC-1
- MURC-2
- MURC-MW
- PL
- PUD
- R-1
- R-2
- R-3
- RE
- TC

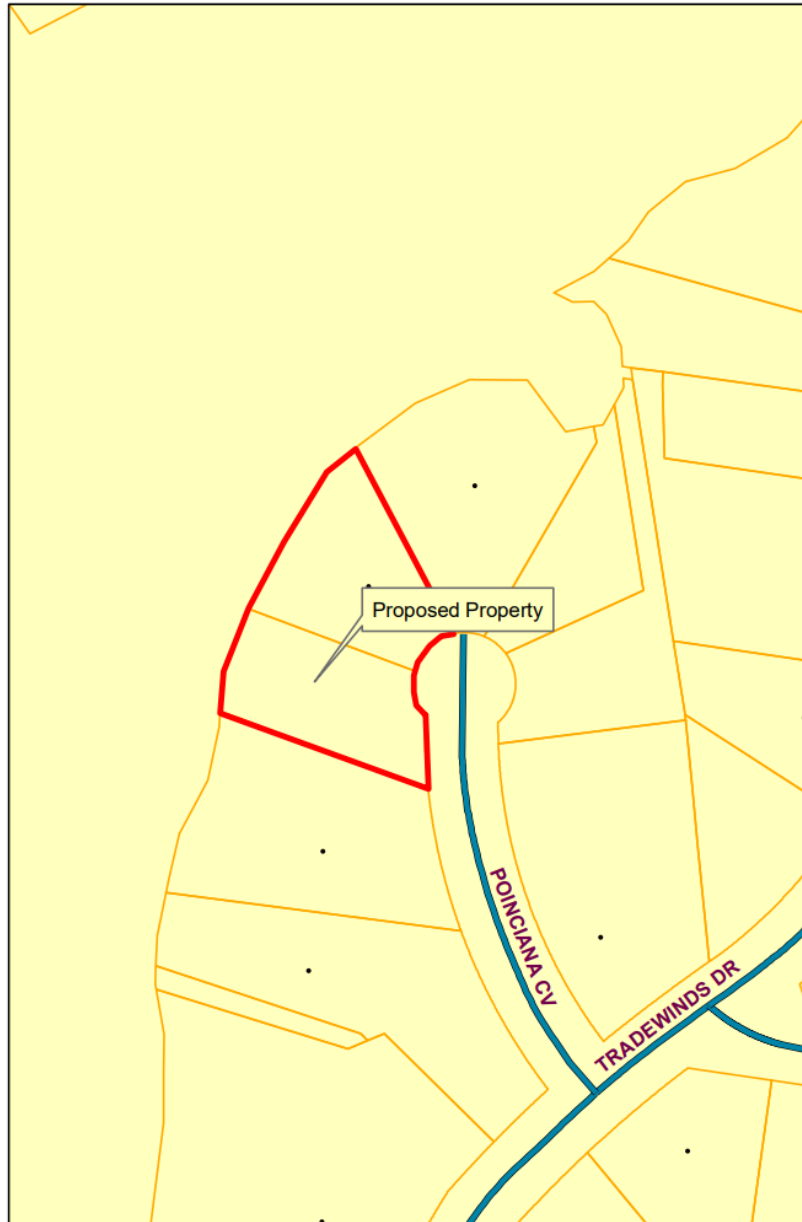


Exhibit C Existing Land-Use

Prepared by:
City of Gautier
Planning Department

Legend

EXISTING LAND USE

ELU_08

- commercial-retail
- conservation
- civic
- industrial
- marina/fish camps
- high density residential
- mobile home
- mobile home park
- medium density residential
- office
- recreation
- very low to low density residential
- utility
- vacant

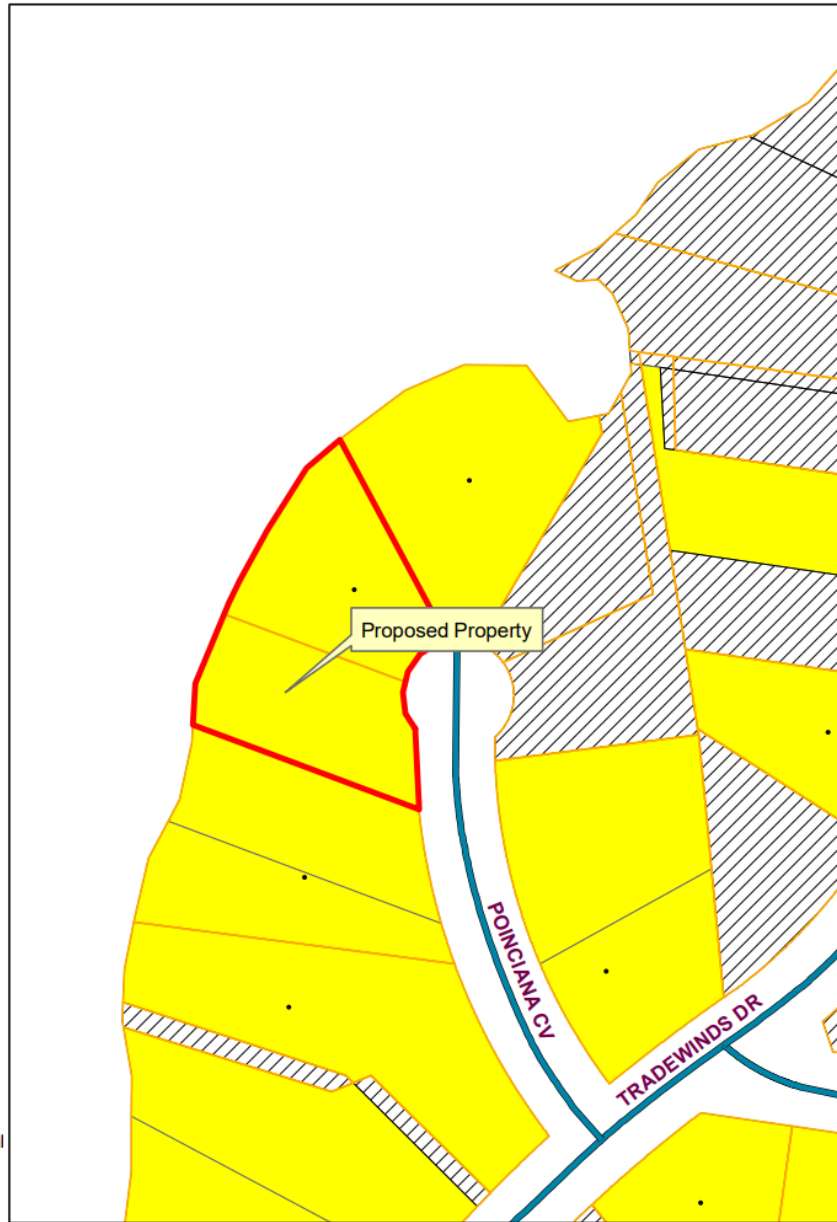

















Exhibit D Future Land-Use

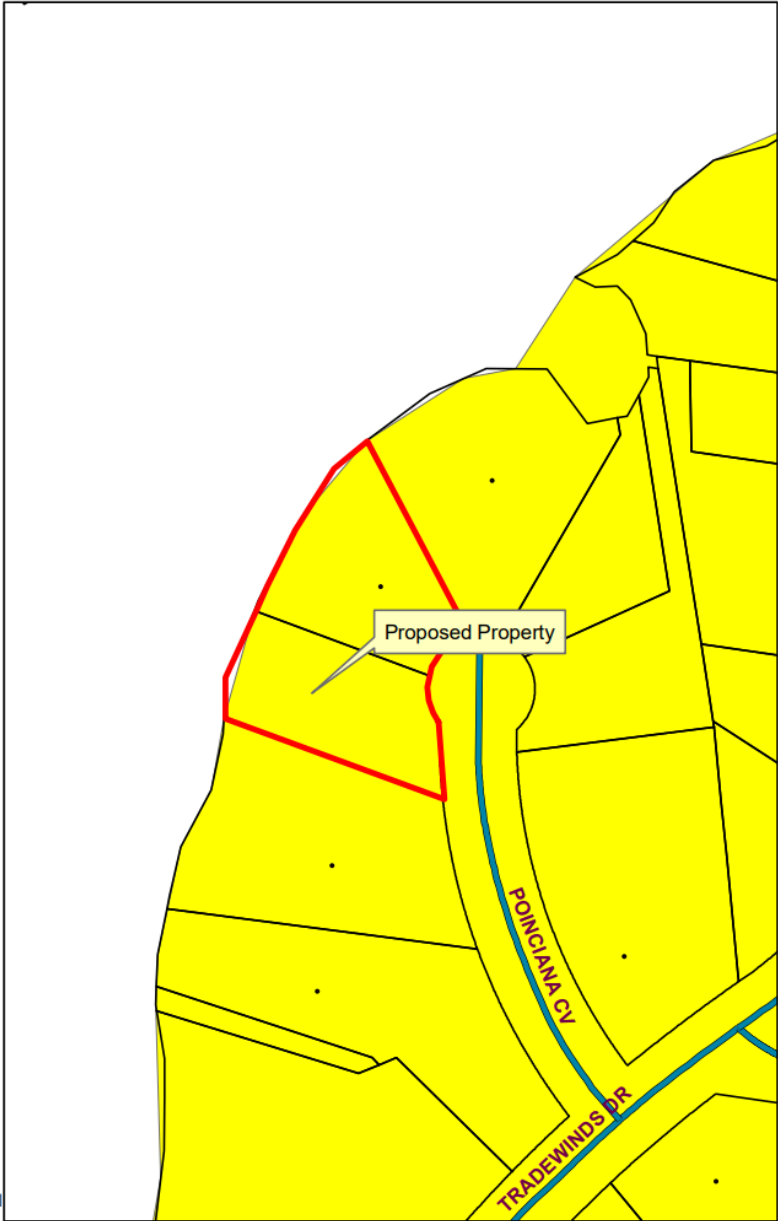
Prepared By:
City of Gautier
Planning Department

Legend

FUTURE LAND USE

FLU_Class

-  Civic
-  high impact commercial
-  Conservation
-  High Density Residential
-  Industrial
-  Low Density Residential
-  Medium Density Residential
-  Mobile Home Residential
-  low impact Commercial
-  Recreational
-  recreational commercial
-  Regional Scale Commercial
-  mixed use residential
-  Town Center
-  Very Low Density Residential



APRIL 3, 2025
GAUTIER, MISSISSIPPI

BE IT REMEMBERED that a meeting of the Gautier Planning Commission of The City of Gautier, Mississippi, was held on April 3, 2025, at 5:30 PM in the Council Chambers of the Gautier Municipal Building at 3330 Highway 90, Gautier, Mississippi.

Commission Members present were: Vice-Chairman Josh Ward, Commissioners Maurice Hudson, Chris Hoover, and Ricky Decoteau. Also present were Scott Ankersen, Planning Director, Josh Danos, City Attorney (by phone), and Babs Logan, Planning Technician. Absent were Commissioners DeAnna McManus, William Davis, and Chairman Kay C. Jamison.

AGENDA

GAUTIER PLANNING COMMISSION

APRIL 3, 2025

5:30 P.M.

- I. CALL TO ORDER**
- II. PLEDGE OF ALLEGIANCE (VOLUNTEER)**
- III. APPROVAL OF AGENDA**
- IV. APPROVAL OF MINUTES (DECEMBER 5, 2024, FEBRUARY 6, 2025, MARCH 6, 2025, & MARCH 18, 2025)**
- V. PUBLIC COMMENTS
(MATTERS OF THE PLANNING COMMISSION NOT LISTED ON THE AGENDA)**
- VI. OLD BUSINESS**
- VII. NEW BUSINESS**
 - 1. Consider a request for a twenty-nine point seven foot (29.7') variance to front yard setback requirements for an accessory structure in a R-3 Mobile/Manufactured Home Residential Zoning District. 3556 Mackerel Drive, (GPC #25-11-VAR)
 - 2. Consider a request for a Special Exception that would allow a tire shop in a MURC-1 Mixed Use Recreation Commercial Zoning District. 3000 Ladnier Road, PID #82502180.100. (GPC #25-12-SE)
 - 3. Nominations for the Larry Moran Excellence Award for 2024

VIII. GENERAL DISCUSSION

A. PREVIOUS CASE UPDATES

B. PERMIT & TRC REPORTS

IX. ADJOURN

Commissioner Decoteau made a motion to approve the Agenda.

Commissioner Hudson seconded the motion, and the following vote was recorded:

AYES: Josh Ward
Maurice Hudson
Chris Hoover
Ricky Decoteau

ABSENT: Kay C. Jamison
DeAnna McManus
William Davis

Motion Passed

Commissioner Decoteau made a motion to approve February 6, 2025, and March 18, 2025, minutes, and to table December 5, 2024, and March 6, 2025, minutes because there was not a quorum present from those two meetings to vote on approval.

Commissioner Ward seconded the motion, and the following vote was recorded:

AYES: Josh Ward
Maurice Hudson
Chris Hoover
Ricky Decoteau

ABSENT: Kay C. Jamison
DeAnna McManus
William Davis

Motion Passed.

PUBLIC COMMENTS (MATTERS OF THE PLANNING COMMISSION NOT LISTED ON THE AGENDA) - None

OLD BUSINESS - None

NEW BUSINESS

1. Consider a request for a twenty-nine point seven foot (29.7') variance to front yard setback requirements for an accessory structure in a R-3 Mobile/Manufactured Home Residential Zoning District. 3556 Mackerel Drive, (GPC #25-11-VAR)

Scott Ankerson, Planning Director, gave a brief overview of the case. He noted that the sketch provided by the applicant shows that the accessory structure would still meet the front setback requirements for a primary structure on a parcel in that district.

REQUEST:

The Planning Department has received a request from Paul Brayfield for a twenty-nine point seven foot (29.7') variance to front yard setback requirements for an accessory structure in a R-3 Mobile/Manufactured Home Residential Zoning District at 3556 Mackerel Drive. (GPC #25-11-VAR). The application fee of \$175 was paid on February 13, 2025. All public notice requirements have been met.

BACKGROUND:

The applicant would like to build a 24' x 24' carport over an existing concrete slab in front of his house. The proposed location would put the carport 29.7' past the front building line of his house. The Unified Development Ordinance (UDO) requires accessory structures to be behind the front building line of the primary structure. The carport would still be 34.8' from the front property line. The applicant is asking for a 29.7' variance to front yard setback requirements for an accessory structure.

DISCUSSION:

The applicant is asking for a 29.7' variance to front yard setback requirements for an accessory structure in a R-3 Mobile/Manufactured Home Residential Zoning District. He would like to put the carport in front of his house on an existing concrete slab. The carport would be 34.8' from the front property line. The Unified Development Ordinance (UDO) requires accessory structures to be behind the front building line of the primary structure.

DETERMINATION OF APPLICABLE LAW:

The Unified Development Ordinance (UDO) defines **Variances** as:

A Variance is a relaxation of the terms of the Unified Development Ordinance where such Variance will not be contrary to the public interest and where, owing to conditions peculiar to the property, a literal enforcement of the Ordinance would result in an unnecessary or undue hardship. As used in this Ordinance, a Variance is authorized only for height, area and size of structure, or size of yards, separation of uses, open spaces, off-street parking spaces and some subdivision of property. The establishment or expansion of a use not permitted shall not be allowed by Variance.

The UDO defines **Hardship** as:

Hardship means the unnecessary hardship that would result from a failure to grant the requested variance or special exception. An unnecessary hardship exists if:

- (1) the land in question cannot yield a reasonable return if used only
 - (a) for a purpose allowed in that zone (applicable to special exceptions), or
 - (b) as permitted by the dimensional requirements of this ordinance (applicable to variances);
- (2) that the plight of the owner is due to unique circumstances of the land for which the variance or special exception is sought; and
- (3) that the use to be authorized by the variance will not alter the essential character of the locality.

UDO SECTION 4.18: Variance

In certain circumstances, a Variance from the dimensional requirements (i.e. height, setbacks, square footage) of this ordinance may be granted if the applicant can prove that because of physical constraints of the property involved, he is not able to build the same type of structure that other persons with the same zoning classification can build. Variances for uses permitted will not be considered in as much as “use Variances” are not legal in the State of Mississippi.

Most Variances must be granted by the City Council; however, certain minor Variances may be granted by the Economic Development Director in accordance with *Section 4.18.3* below.

4.18.1 Who May Initiate

A request for a Variance may be initiated by the property owner or agent of the owner provided that said property has not been denied a previous request for a Variance for the same property or portion of property within the past twelve (12) months.

4.18.2 Application for Variance

Applications for a Variance (from dimensional requirements) may be filed on the appropriate application available from the Economic Development/Planning Department and shall include all requested information, attachments and submittals:

4.18.3 Administrative Variances

The following dimensional variances may be granted by the Economic Development Director at his/her discretion (Note: Within the COR, Corridor Overlay District, applicants shall be required to mitigate a requested dimensional variance in accordance with the Tier Land Use Provisions in Section 5.11):

- A. 30% of required off-street parking spaces and/or
- B. 30% of required setbacks from property lines

4.18.4 Criteria for Approval

The Variance application shall demonstrate the following:

- A. That special conditions and circumstances exist which are peculiar to this particular site (lot or parcel), structure or building involved and which are not applicable to other sites (lots or parcels) or structures or buildings in the same district;
- B. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the provisions of this Ordinance;
- C. That the special conditions and circumstances do not result from actions of the applicant; and
- D. That granting the Variance requested will not confer upon the applicant any special privilege that is denied by this Ordinance to other similar sites (lots or parcels) structures or buildings in the same district.

RECOMMENDATION & CONCLUSION:

If recommending approval, Planning Commission shall record that the evidence presented meets all "Criteria for Approval" from the UDO as listed above.

The Planning Commission may:

1. Recommend that City Council approve the variance request as presented;
2. Recommend that City Council approve the variance request with changes; or
3. Recommend that City Council deny variance request.

Vice-Chairman Ward asked the applicant to present his case.

Paul Brayfield, applicant, said he wants to build a steel carport on an existing concrete slab in front of his house. He said he can't build on the side because there is not enough room. He noted that it appears from the survey that there is a 34.8' setback from the front property line to where he would like to put the carport. The structure is wind rated.

Vice-Chairman Ward asked Mr. Ankerson about using an existing slab, since typically you would use footers on steel columns and the slab is already there.

Mr. Ankerson said he had not seen actual plans but if it is a Carolina carport type structure, they do have tie down methods and could use ground anchors on the outside

of the slab. As long as the plan is stamped by an engineer saying it will meet the 160 mph wind rating, and the 2018 adopted Code, it would be okay.

Mr. Brayfield said he had the brochure from the company that has the instructions for putting the four posts in the ground and concrete. He said this particular structure is 168 mph wind rated.

Vice-Chaiman Ward said that he went and looked at the property and it would be hard to put anything on the side of the house. He noted that since there would be a 34' front setback and it was a carport which has no walls there wouldn't be a site visibility issue.

There were none in attendance speaking in opposition of the request.

ACTION TAKEN:

Commissioner Hudson made a motion to recommend that the City Council approve the variance.

Vice-Chairman Ward seconded the motion, and the following vote was recorded:

- AYES:** **Josh Ward**
 Maurice Hudson
 Chris Hoover
 Ricky Decoteau

- ABSENT** **Kay C. Jamison**
 DeAnna McManus
 William Davis

Motion passed.

-
- 2. Consider a request for a Special Exception that would allow a tire shop in a MURC-1 Mixed Use Recreation Commercial Zoning District. 3000 Ladnier Road, PID #82502180.100. (GPC #25-12-SE)

Scott Ankerson, Planning Director, gave a brief overview of the case. He advised the Commissioners that there had previously been a tire shop at this location that had quite a few Code Enforcement problems and violations. The City had to perform a City abatement on the property and spend thousands of dollars cleaning up the property. There were thousands of tires that were left behind. He advised them of this so if they were looking to recommend approval of the request they might consider putting some strict conditions on the request. Perhaps restrict the number of tires they can store on the

property or how they can store them, whether that be inside a structure or behind the fence. Things to think about since the City had problems with this property with this same use.

Vice-Chairman Ward asked if this was the same owner or a new owner.

Elizabeth Simpson, the applicant's wife, said they own the new business but not the building.

REQUEST:

The Planning Department has received a request from Jason Simpson dba E & J Tire and Automotive for a Special Exception that would allow a tire shop in a MURC-1 Mixed Use Recreation Commercial Zoning District at 3000 Ladnier Road, PID #82502180.100. (GPC #25-12-SE). The application fee of \$250 was paid on March 10, 2025. All public notice requirements have been met.

BACKGROUND:

The request property is zoned MURC-1 Mixed Use Recreation Commercial.

1. Location: 3000 Ladnier Road, PID #82502180.100 (See Exhibit A)
2. General features of the proposed project:
Lot Size: approximately 0.76 acres
3. Potable Water and Wastewater Services: Available at current location
4. Current Zoning (See Exhibit B): MURC-1 Mixed Use Recreation Commercial
5. Current Surrounding Zoning (See Exhibit B): MURC-1 Mixed Use Recreation Commercial to the north and south, R-1 Single Family Residential to the east and west.
6. Current Surrounding Existing Land Use (See Exhibit C): Residential to the north and west, (also a Pregnancy Resource Organization to the west that was given special permission by the city to be located in a Residential District), Vacant to the south and east.
7. Comprehensive Plan Future Land Use Designation (See Exhibit D): High Impact Commercial

DISCUSSION:

The following addresses the review criteria for a Special Exception outlined in Section 4.16.4 of the UDO.

1. Explain how a literal interpretation of the City of Gautier's Unified Development Ordinance would deprive the applicant of rights commonly enjoyed by others

of the district in which the property is located, and would work unnecessary hardship upon the applicant?

Applicant Response: *This property has been a tire shop for the past 10 plus years. With the exception of a shop out close to 57, there are no others close or even in Gautier at all, that I am aware of. The citizens of Gautier deserve a quality tire installer who operates within the city limit and is known for honesty, integrity and dedication to their customers.*

Staff Finding: *Unsubstantiated*

2. Explain how the requested Special Exception will be in harmony with the purpose of the City of Gautier's Unified Development Ordinance and will not be injurious to the neighborhood or the general welfare?

Applicant Response: *We, as a business, take pride in our establishment, the property, and surrounding areas. Trash will not pile up, no vehicles in a state of major disrepair will be left outside the building, and noises will be kept to a minimum. We strive to exist in harmony with any and all neighbors and citizens.*

Staff Finding: *Unsubstantiated*

3. Explain how the special circumstances requiring the proposed Special Exception are not results of actions of the applicant.

Applicant Response: *The building sat vacant for more than 180 days after the last business vacated. We are not affiliated with Martin's Tire in any way.*

Staff Finding: *Unsubstantiated*

DETERMINATION OF APPLICABLE LAW:

1. The UDO defines a Special Exception as a relaxation of the terms of the Unified Development Ordinance where such an exception will not be contrary to the public interest, and where, owing to conditions peculiar to the property, a literal enforcement of the ordinance would result in undue hardship. Special Exceptions are necessary when an applicant seeks to establish or expand a use not ordinarily permitted in a specific zoning district. "Special Exceptions" are not transferable from one (1) owner of land to another.
2. Special Exception requires a public hearing before the Planning Commission and approval by the City Council (Section 4.14 of the UDO).
3. Once an application for a Special Exception is submitted to the Planning Department, the procedures outlined in UDO Section 4.14.1 will be followed. At the appropriate time, The Planning Commission will conduct a public hearing to determine whether the applicant meets all relevant criteria, and make a recommendation to City Council pursuant to UDO Section 4.14.4. City Council,

pursuant to UDO Section 4.14.4(C), will then consider the matter at its next regularly scheduled meeting and approve or deny the Special Exception.

4. A Special Exception is required for uses not ordinarily permitted in a specific zoning district. Special Exceptions are not permitted by right, and may only be granted when certain criteria are established. (4.16.4)
5. Special Exceptions do not run with the land, and may be revoked by the Planning Department if any of the following circumstances are discovered:
 - A. The property changes ownership
 - B. The property is being utilized in a manner not permitted under the zoning regulations or the special exception; or
 - C. The property ceases to be used for the purpose allowed in the Special Exception for a period of one hundred eighty (180) days during the existence of the Special Exception.

The UDO defines **Hardship** as:

Hardship means the unnecessary hardship that would result from a failure to grant the requested variance or special exception. An unnecessary hardship exists if:

- (1) the land in question cannot yield a reasonable return if used only
 - (a) for a purpose allowed in that zone (applicable to special exceptions), or
 - (b) as permitted by the dimensional requirements of this ordinance (applicable to variances);
- (2) that the plight of the owner is due to unique circumstances of the land for which the variance or special exception is sought; and
- (3) that the use to be authorized by the variance will not alter the essential character of the locality.

RECOMMENDATION & CONCLUSION:

If recommending approval, Planning Commission shall record that the evidence presented meets the “Criteria for Approval” from the UDO as listed above.

The Planning Commission may:

1. Recommend that City Council approve the Special Exception;
2. Recommend that City Council approve the Special Exception with changes; or
3. Recommend that City Council deny the Special Exception.

Vice-Chairman Ward asked the applicant to present her case.

Jason Simpson, the applicant, said they had a tire shop in Pascagoula for five years.

Mrs. Simpson said the property was sold out from underneath them while they were still renting the building. It was sold to the City of Pascagoula. She said there is a 14-million-dollar development that is being built behind where the shop is located. The landlord of the building decided that she preferred the money, and the City decided a used tire shop

was not a good look across from a brand new hotel. She said they moved as quickly as possible. They had no time or warning.

Vice-Chairman Ward advised the applicants, that if the Commission recommended approval of the request, there would be stipulations placed on the approval because of previous Code Enforcement issues at the property for the same use they were asking for.

Mrs. Simpson said they take a lot of pride in the way their business looks. The tires outside will be well maintained. There will be no standing water, and they will treat for mosquitoes. The whole back of property where tires are stored are fenced in with a wooden privacy fence.

Vice-Chairman Ward said he would suggest that a stipulation put on the request that everything needs to be behind the fence.

Mr. Ankerson said that the thousands of tires that the City spent money cleaning up were behind that fence. It is a very large backyard.

Commissioner Decoteau asked what the applicant's procedure was for getting rid of old tires.

Mrs. Simpson said they have a licensed disposal company that picks them up. They never let their bad tires get to be more than about 450 or so and they get rid of them all at once. She said they come to pick up the old tires every two or three weeks.

Commissioner Decoteau asked how many used tires for sale did they have on hand at any given time.

Mr. Simpson said maybe a thousand and they would be stored behind the fence.

Mrs. Simpson said they have big wooden racks the tires are on to make them easily accessible and easily movable.

Commissioner Decoteau asked if in the five years they were located in Pascagoula was there ever a time they felt like they were getting overwhelmed with too many tires at once.

Mrs. Simpson said that over the last five years there were probably two times they felt that way and that was the removal of the old ones.

Mr. Simpson said he thought the feeling of being overwhelmed was because they had to keep everything inside at their Pascagoula location because they didn't have a yard like this place does.

Commissioner Hudson said that besides the tires at the previous tire shop, there were old broke down cars that were there. He asked the applicants if it would be just tires or would it also be a mechanic shop.

Mrs. Simpson said they would be doing very light mechanic work. It would be maintenance work, such as brakes and valve cover gaskets. There would never be a need for cars to be there longer than a week unless they were waiting on parts to come in.

Mr. Simpson said that any mechanical work would probably take under four hours labor time.

Mrs. Simpson said they were planning on repainting the building.

Vice-Chairman Ward asked Mr. Ankerson if everything had been cleaned up from the previous owner or was there need for more cleanup.

Mr. Ankerson said the City had completely cleaned it up. He said he had checked to see if the lien was still posted on the property from where the City had paid to have it cleaned up. When the City puts a lien on a property it sometimes is not paid until the property sells, but when he checked with the county it only showed this year's taxes being owed so it does appear that the lien has been paid.

Vice-Chairman Ward suggested putting a limit on the number of tires that could be on the property.

Commissioner Hudson suggested at least restrict them from being higher than the fence.

Vice-Chairman Ward then suggested stipulations for no more than a total of 2500 tires not to be seen above the fence line, and to restrict the amount of time cars could be parked at the property overnight. If more time was needed, then they could let the Planning Department know.

There were none in attendance speaking in opposition of the request.

ACTION TAKEN:

Vice-Chairman Ward made a motion to recommend that City Council approve the Special Exception with the following restrictions, 1) no more than 2500 tires are placed behind the fence line and must be below the 6' height level of the fence, 2) all overnight cars are limited to 7 days, anything greater than 7 days needs to be reported to the Planning Department.

Commissioner Decoteau seconded the motion, and the following vote was recorded:

AYES:	Josh Ward Maurice Hudson Chris Hoover Ricky Decoteau
ABSENT:	Kay C. Jamison DeAnna McManus William Davis

Motion passed.

3. Nominations for the Larry Moran Excellence Award for 2024

Vice-Chairman Ward asked for nominations for the Larry Moran Excellence Award for 2024 and advised that **Chairman Jamison** had sent an email that she would like to nominate O’Pink’s Sweets Treats and More, owned by LaTanya Lett, for the Larry Moran award. In her email Chairman Jamison said that Ms. Lett encourages all businesses in Gautier, and that she has partnered with several of those businesses, including Killer Crab and Seafood, to sell her tasty cheesecakes. Ms. Lett and O’Pink’s set the bar very high for all local businesses. Vice-Chairman Ward said that he thinks that Ms. Lett is a very worthy person to receive the award. She has always given back to the community. He then asked if anyone had another nomination.

Commissioner Hoover stated that the things Ms. Lett does within the community are great.

Vice-Chairman Ward made a motion to nominate O’Pink’s Sweets Treats and More for the 2024 Larry Moran Excellence Award.

Commissioner Decoteau seconded the motion, and the following vote was recorded:

AYES: **Josh Ward**
 Maurice Hudson
 Chris Hoover
 Ricky Decoteau

ABSENT: **Kay C. Jamison**
 DeAnna McManus
 William Davis

Motion passed. *LaTanya Lett, owner of O’Pink’s Sweets Treats and More, is the recipient of the Larry Moran Excellence Award for 2024.*

GENERAL DISCUSSION

A. PREVIOUS CASE UPDATES

Mr. Ankerson advised Commissioners that City Council had approved GPC 25-06-VAR for an accessory building on Poinciana Cove.

B. PERMIT & TRC REPORT

Mr. Ankerson presented the February 2025 monthly report and advised Commissioners that the March 2025 report had not been completed and would be presented at the May meeting.

Vice-Chairman Ward made a motion to adjourn the meeting.

Commissioner Hoover seconded the motion, and the following vote was recorded:

AYES: **Josh Ward**
 Maurice Hudson
 Chris Hoover
 Ricky Decoteau

ABSENT: **Kay C. Jamison**
 DeAnna McManus
 William Davis

Motion Passed.

APPROVED BY:

Scott Ankerson
Planning Director/Building Official

DATE: _____

Josh Ward, Vice-Chairman
Gautier Planning Commission

DATE: _____

BACKUP DOCUMENTATION

Gautier Planning Commission

Regular Meeting Agenda

April 3, 2025

GPC #25-11-VAR

3556 Mackerel Drive

VII. NEW BUSINESS

1. Consider a request for a twenty-nine point seven foot (29.7') variance to front yard setback requirements for an accessory structure in a R-3 Mobile/Manufactured Home Residential Zoning District. 3556 Mackerel Drive, (GPC #25-11-VAR)

**CITY OF GAUTIER
STAFF REPORT**

To: Chairman and Members, Planning Commission

From: Scott Ankerson, Planning Director

Date: March 24, 2025

Subject: Consider a request for a twenty-nine point seven foot (29.7') variance to front yard setback requirements for an accessory structure in a R-3 Mobile/Manufactured Home Residential Zoning District at 3556 Mackerel Drive. (GPC #25-11-VAR)

REQUEST:

The Planning Department has received a request from Paul Brayfield for a twenty-nine point seven foot (29.7') variance to front yard setback requirements for an accessory structure in a R-3 Mobile/Manufactured Home Residential Zoning District at 3556 Mackerel Drive. (GPC #25-11-VAR). The application fee of \$175 was paid on February 13, 2025. All public notice requirements have been met.

BACKGROUND:

The applicant would like to build a 24' x 24' carport over an existing concrete slab in front of his house. The proposed location would put the carport 29.7' past the front building line of his house. The Unified Development Ordinance (UDO) requires accessory structures to be behind the front building line of the primary structure. The carport would still be 34.8' from the front property line. The applicant is asking for a 29.7' variance to front yard setback requirements for an accessory structure.

DISCUSSION:

The applicant is asking for a 29.7' variance to front yard setback requirements for an accessory structure in a R-3 Mobile/Manufactured Home Residential Zoning District. He would like to put the carport in front of his house on an existing concrete slab. The carport would be 34.8' from the front property line. The Unified Development Ordinance (UDO) requires accessory structures to be behind the front building line of the primary structure.

DETERMINATION OF APPLICABLE LAW:

The Unified Development Ordinance (UDO) defines **Variances** as:

A Variance is a relaxation of the terms of the Unified Development Ordinance where such Variance will not be contrary to the public interest and where, owing to conditions peculiar to the property, a literal enforcement of the Ordinance would result in an unnecessary or undue hardship. As used in this Ordinance, a Variance is authorized only for height, area and size of structure, or size of yards, separation of uses, open spaces, off-street parking spaces and some subdivision of property.

The establishment or expansion of a use not permitted shall not be allowed by Variance.

The UDO defines **Hardship** as:

Hardship means the unnecessary hardship that would result from a failure to grant the requested variance or special exception. An unnecessary hardship exists if:

- (1) the land in question cannot yield a reasonable return if used only
 - (a) for a purpose allowed in that zone (applicable to special exceptions), or
 - (b) as permitted by the dimensional requirements of this ordinance (applicable to variances);
- (2) that the plight of the owner is due to unique circumstances of the land for which the variance or special exception is sought; and
- (3) that the use to be authorized by the variance will not alter the essential character of the locality.

UDO SECTION 4.18: Variance

In certain circumstances, a Variance from the dimensional requirements (i.e. height, setbacks, square footage) of this ordinance may be granted if the applicant can prove that because of physical constraints of the property involved, he is not able to build the same type of structure that other persons with the same zoning classification can build. Variances for uses permitted will not be considered in as much as “use Variances” are not legal in the State of Mississippi.

Most Variances must be granted by the City Council; however, certain minor Variances may be granted by the Economic Development Director in accordance with *Section 4.18.3* below.

4.18.1 Who May Initiate

A request for a Variance may be initiated by the property owner or agent of the owner provided that said property has not been denied a previous request for a Variance for the same property or portion of property within the past twelve (12) months.

4.18.2 Application for Variance

Applications for a Variance (from dimensional requirements) may be filed on the appropriate application available from the Economic Development/Planning Department and shall include all requested information, attachments and submittals:

4.18.3 Administrative Variances

The following dimensional variances may be granted by the Economic Development Director at his/her discretion (Note: Within the COR, Corridor Overlay District, applicants shall be required to mitigate a requested dimensional variance in accordance with the Tier Land Use Provisions in Section 5.11):

- A. 30% of required off-street parking spaces and/or
- B. 30% of required setbacks from property lines

4.18.4 Criteria for Approval

The Variance application shall demonstrate the following:

- A. That special conditions and circumstances exist which are peculiar to this particular site (lot or parcel), structure or building involved and which are not applicable to other sites (lots or parcels) or structures or buildings in the same district;
- B. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the provisions of this Ordinance;
- C. That the special conditions and circumstances do not result from actions of the applicant; and
- D. That granting the Variance requested will not confer upon the applicant any special privilege that is denied by this Ordinance to other similar sites (lots or parcels) structures or buildings in the same district.

RECOMMENDATION & CONCLUSION:

If recommending approval, Planning Commission shall record that the evidence presented meets all "Criteria for Approval" from the UDO as listed above.

The Planning Commission may:

1. Recommend that City Council approve the variance request as presented;
2. Recommend that City Council approve the variance request with changes; or
3. Recommend that City Council deny variance request.

ATTACHMENTS:

1. Applicant's Exhibit 1 – Application
2. City's Exhibit A – Location Map
3. City's Exhibit B – Existing Zoning Map
4. City's Exhibit C – Existing Land Use Map
5. City's Exhibit D – Future Land Use Map

GAUTIER, MISSISSIPPI

PLANNING DEPARTMENT
PUBLIC HEARING APPLICATION

Public Hearing Number

25-11-VAR

<u>TO BE HEARD BY GAUTIER PLANNING COMMISSION:</u>	<u>FEE:</u>
Variance _____	\$176.00
*Includes \$1.00 filing fee per MS Code §25-60-5	

Name of Applicant: PAUL BRAYFIELD

Name of Business: _____ Phone: _____

Property Address: 3556 MACKEDA DR Mailing Address (if Different): _____

E-Mail Address: PAUL266US@NETSCAPE.NET

Reason for request, location and intended use of Property: WOULD LIKE TO BUILD A

CARPORT OVER MY EXISTING CONCRETE SLAB IN FRONT OF HOUSE
ATTACHMENTS REQUIRED AS APPLICABLE: 29.7' VARIANCE

- 1. Diagram of intended use, showing dimensions and distances of property, building with setbacks, parking spaces, entrances and exits.
- 2. A detailed project narrative.
- _____ 3. Copy of protective covenants or deed restrictions, if any.
- _____ 4. Copies of approvals, or requests for approval, from other agencies, such as, but not limited to, the Mississippi State Department of Health, U.S. Army Corp of Engineers, Mississippi Department of Environmental Quality and Department of Marine Resources.
- _____ 5. Any other information requested by the Planning Director.

Signature of Applicant: [Signature] Date of Application: 2/13/25

FOR OFFICE USE ONLY	
Date Received <u>2/13/25</u>	Verify as Complete <u>Babs</u>
Fee Amount Received <u>176.00</u>	Initials of Employee Receiving Application <u>Babs</u>

R-3

VARIANCE

Criteria for Approval

1. What special conditions and circumstances exist which are peculiar to this particular site (lot or parcel), structure or building involved and which are not applicable to other sites (lots or parcels), or structures or buildings in the same district?

WANT TO BUILD A CARPORT IN FRONT OF HOUSE

2. Are these special conditions and circumstances a result of your actions? Explain.

NO

3. How will the literal interpretation of the provisions of this Ordinance deprive you of rights commonly enjoyed by other properties in the same district under the provisions of this Ordinance? Explain.

WILL NOT BE ABLE TO BUILD THE CARPORT

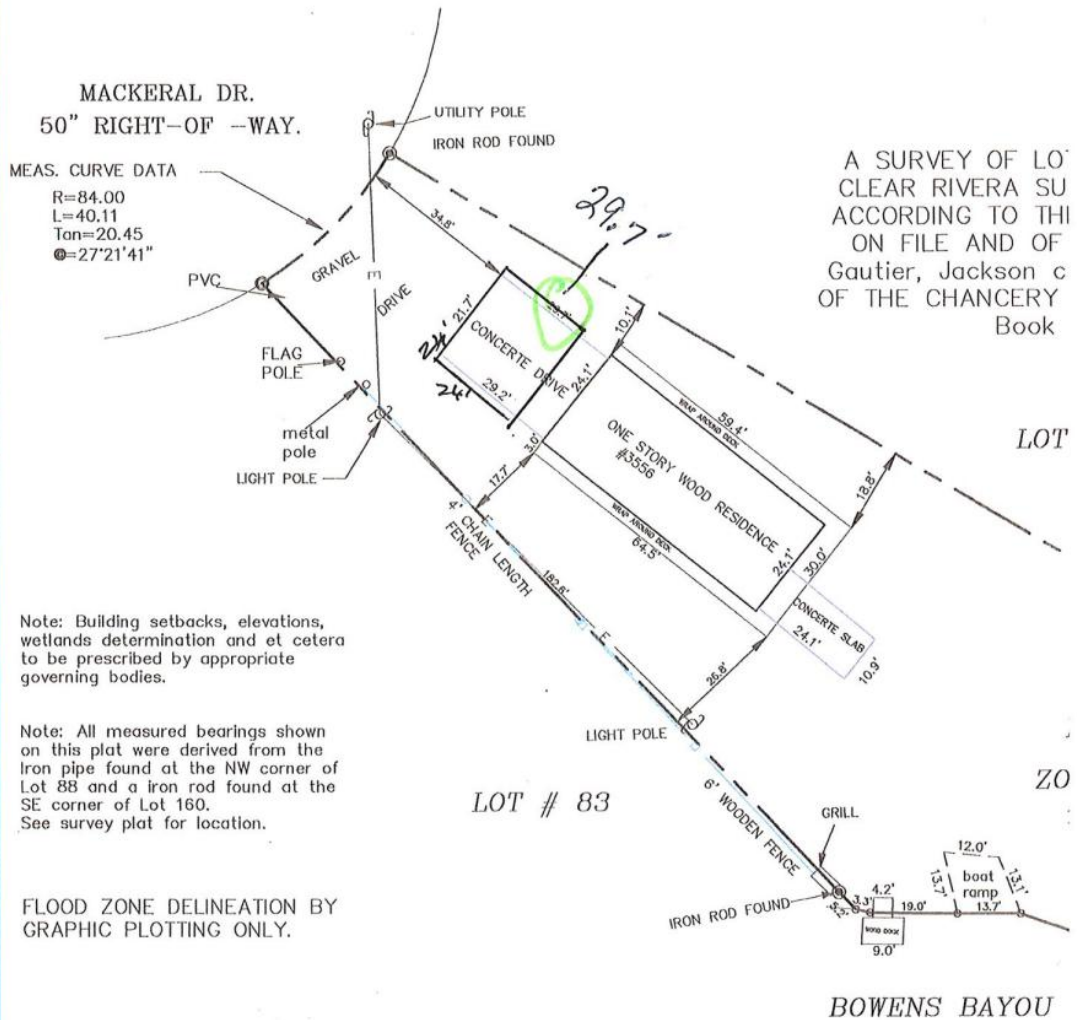
4. Will the granting of the Variance requested confer upon you any special privilege that is denied by this Ordinance to other similar sites (lots or parcels), structures or buildings in the same district? Explain.

NO

NARRATIVE

BUILD A CURBOUT IN FRONT OF HOUSE
OVER CONCRETE DRIVEWAY

Note: This survey has been prepared by information provided by the client and without the benefit of a current title report other restrictions of record. Surveyor will be made available to add such features to this survey if a current title report authority. This survey does not warrant present ownership.



Note: Building setbacks, elevations, wetlands determination and et cetera to be prescribed by appropriate governing bodies.

Note: All measured bearings shown on this plat were derived from the iron pipe found at the NW corner of Lot 88 and a iron rod found at the SE corner of Lot 160. See survey plat for location.

FLOOD ZONE DELINEATION BY GRAPHIC PLOTTING ONLY.

Note: By Graphic Plotting only, this property is in Zone "AE" (16) of the Flood Insurance Rate Map 28059C03189G, Community Panel No. 280332-0318-G, revision date June 16, 2009. Check with Building Official for community determined base flood elevation. Exact designation can only be determined by an Elevation Certificate. The above statement is for information only and this surveyor assumes no liability for the correctness of the cited map(s). In addition the above statement does not represent this surveyor's opinion of the probability of flooding.



Quote #99623004, 2/12/2025

Building Type

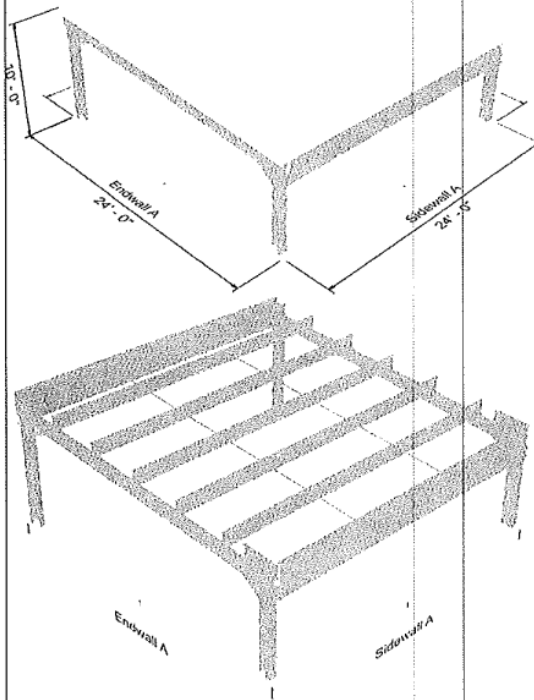
24' - 0" wide x 24' - 0" long x 8' - 0" high building
with roof pitch of Single Slope 1:12

Building Options

N/A
Roof finish: 26G painted
Wall finish: 26G painted

Stamped Engineering Plans

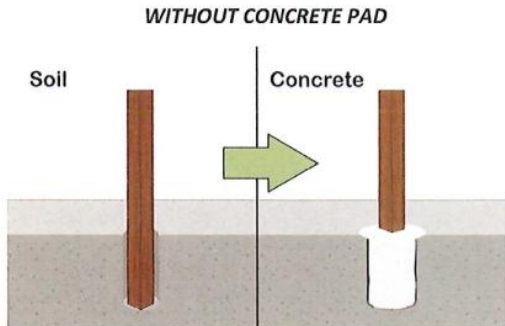
Slab foundation plans included
No snow load
163 mph (Jobsite is in a hurricane-prone region.)
wind speed,
Exposure 'C'
2021 IBC



STEP BY STEP RECOMMENDATION FOR INSTALLATION OF SINGLE SLOPE CARPORT

STEP 1 – SET POSTS

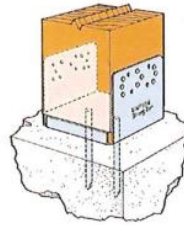
ACCOUNT FOR SLOPE WHEN SETTING POSTS. FRONT POSTS SHOULD BE TALLER THAN BACK POSTS. POSTS SHOULD BE SET ON THE OUTSIDE EDGE OF WIDTH MEASUREMENT AND NO MORE THAN 1 TO 2 FEET INSIDE DEPTH MEASUREMENT ON FRONT AND BACK. ENSURE THAT POSTS ARE LEVEL AND LINED UP BEFORE MOVING TO STEP 2.



BURY ALL POSTS A MINIMUM OF 2 FEET UNDER GROUND. SET IN CONCRETE FOR ADDED STABILITY. CONCRETE SHOULD CURE FOR A MINIMUM OF 24 TO 36 HOURS BEFORE COMPLETING INSTALLATION.



ATTACH BASE BRACKET TO CONCRETE WITH BOLTS OR DRIVE PINS. SET POST IN/ON BRACKET AND SECURE ON SIDES WITH FRAMING SCREWS.



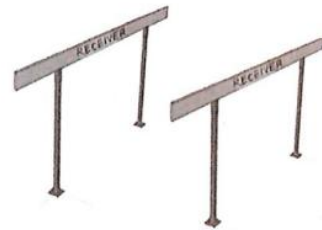
FRAMING SCREW

STEP 2 – INSTALL RECEIVER CHANNEL

NOTCH RECEIVER CHANNEL TO SIT ON POST AS SHOWN. RUN RECEIVER BETWEEN POSTS ON BOTH SIDES. THE CHANNELS SHOULD BE FACING TOWARD THE CENTER. MEASURE TO ENSURE THEY ARE EVEN AND STRAIGHT IN RELATION TO EACH OTHER, THEN SECURE WITH FRAMING SCREWS.



Receiver Channel

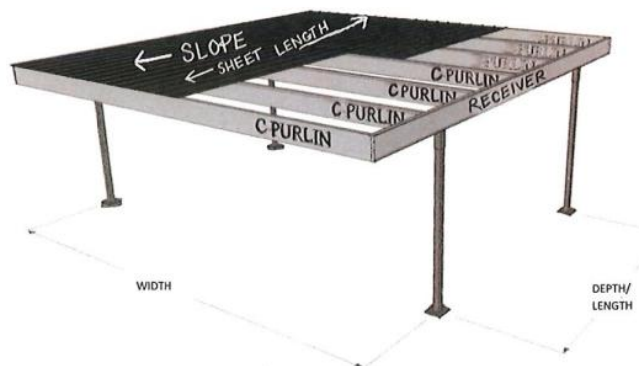


STEP 3 – INSTALL CEE PURLIN

CEE PURLIN WILL SIT INSIDE OF RECEIVER CHANNEL. ONE CEE PURLIN SHOULD BE ON EACH END OF RECEIVER CHANNEL TO FORM A CONTINUOUS BOX AROUND THE PEREMETER. RUN THE REST OF THE CEE PURLIN FACING THE SAME DIRECTION AS THE FRONT EVENLY SPACED. SECURE EACH WITH FRAMING SCREWS.



Cee Profile



STEP 4 – INSTALL PANELS



PANELS WILL RUN THE SAME DIRECTION AS YOUR RECEIVER CHANNEL ACROSS THE TOP OF THE CEE PURLIN. SCREW LINES FOR SECURING THE PANELS WILL RUN ALONG THE CEE PURLIN. SELF DRILL SCREWS WILL TAP THROUGH THE SHEET PANELS AND INTO THE CEE PURLIN UNDERNEATH. LAP/STITCH SCREWS AND SEALANT TAPE WILL BE USED WHERE THE SHEETS OVERLAP, AS WELL AS INSTALLING YOUR TRIM IN THE NEXT STEP. SEE DIAGRAM BELOW FOR RECOMMENDED SCREW PATTERNS.

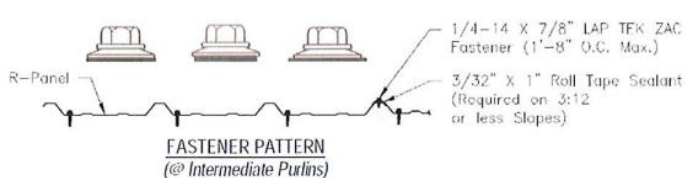


SELF DRILL SCREW

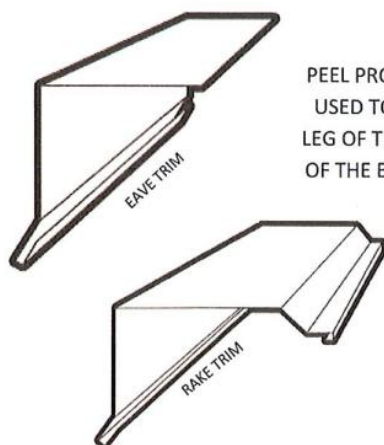


LAP/STITCH SCREW

Correct Under Driven Over Driven



STEP 5 – INSTALL TRIM (OPTIONAL)



PEEL PROTECTIVE FILM OFF ALL COLORED TRIM BEFORE INSTALLATION! EAVE TRIM WILL BE USED TO COVER THE CEE PURLIN ON THE FRONT AND BACK OF THE STRUCTURE. THE TOP LEG OF THE EAVE WILL BE INSTALLED UNDER THE PANELS ON THE LOWER SIDE. THE TOP LEG OF THE EAVE TRIM ON THE HIGHER SIDE OF THE STRUCTURE WILL BE INSTALLED ON TOP OF THE PANELS. RAKE TRIM WILL BE INSTALLED ON THE LENGTH SIDES OF THE




PANELS TO COVER THE RECEIVER CHANNEL. ALL TRIM INSTALLED OVER THE PANELS SHOULD BE INSTALLED WITH LAP SCREWS WHERE IT TOUCHES THE HIGH RIB OF THE PANELS, OTHERWISE USE SELF DRILL SCREWS TO TAP THROUGH THE STRUCTURAL STEEL.

YOU'RE DONE!

IF YOU HAVE ANY QUESTIONS, OR IF WE CAN HELP WITH ANYTHING ELSE, PLEASE LET US KNOW!
THANK YOU FOR CHOOSING METAL MART!

Legal Stuff: This structure has no engineered specifications but has produced excellent results in numerous installations. Building standards vary by location, and as such, always check with local coding and official departments to ensure that a carport/patio structure from Metal Mart will meet minimum codes or requirements in your area. Metal Mart does not make sight visits, as such we cannot ensure that any structure our material may be attached to is built to withstand added weight. It is the customer's responsibility to ensure that any additions to existing structures can be done in a safe and legal manner. Metal Mart is not liable for installation, collateral damage, injury, coding specifications, or contractor workmanship, especially occurring from improper installation. It is always best to consult with an experienced local contractor for proper installation procedure. Always check contractor references before hiring.

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86304101.000 BRAYFIELD PAUL



Exhibit A Location Map

Prepared by:
City of Gautier
Planning Department



Exhibit B Existing Zoning

Prepared by:
City of Gautier
Planning Department

Legend

Zoning

ZONECODE

- AG
- C-1
- C-2
- C-3
- I-2
- MURC-1
- MURC-2
- MURC-MW
- PL
- PUD
- R-1
- R-2
- R-3
- RE
- TC

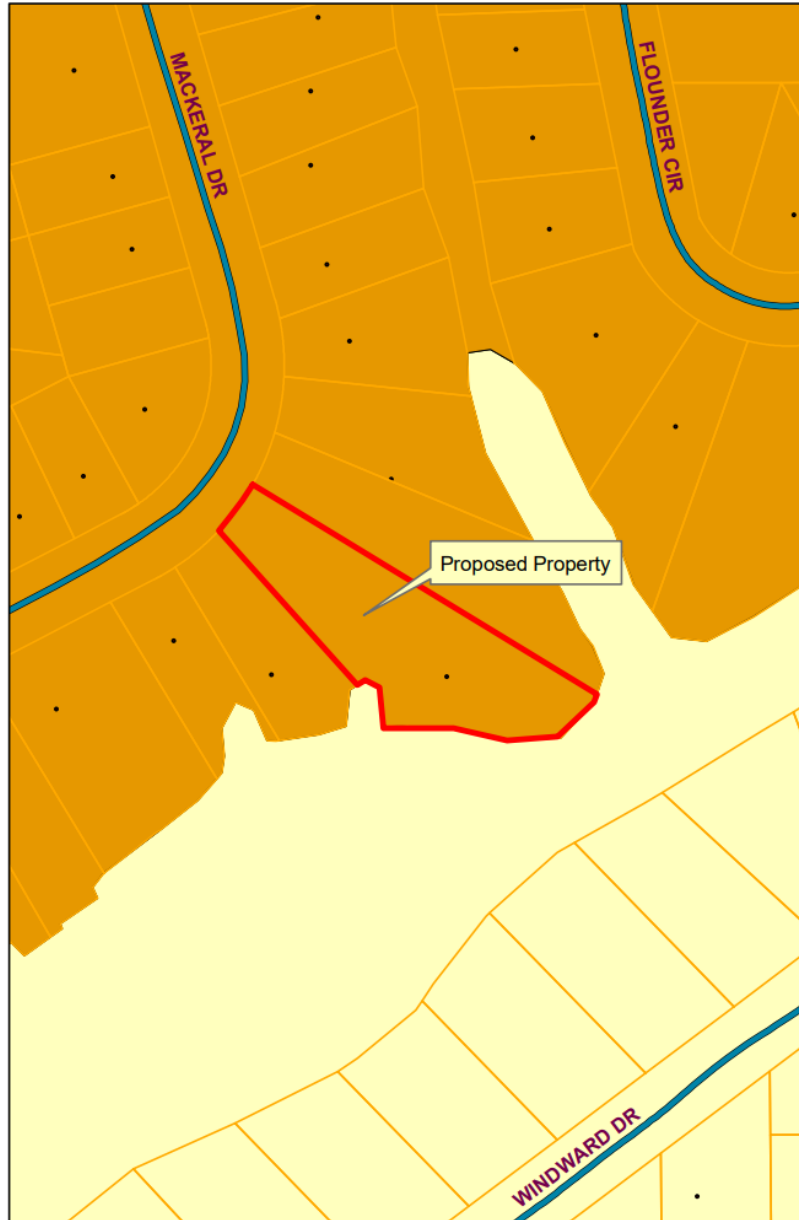


Exhibit C Existing Land-Use

Prepared by:
City of Gautier
Planning Department

Legend

EXISTING LAND USE

ELU_08

- commercial-retail
- conservation
- civic
- industrial
- marina/fish camps
- high density residential
- mobile home
- mobile home park
- medium density residential
- office
- recreation
- very low to low density residential
- utility
- vacant

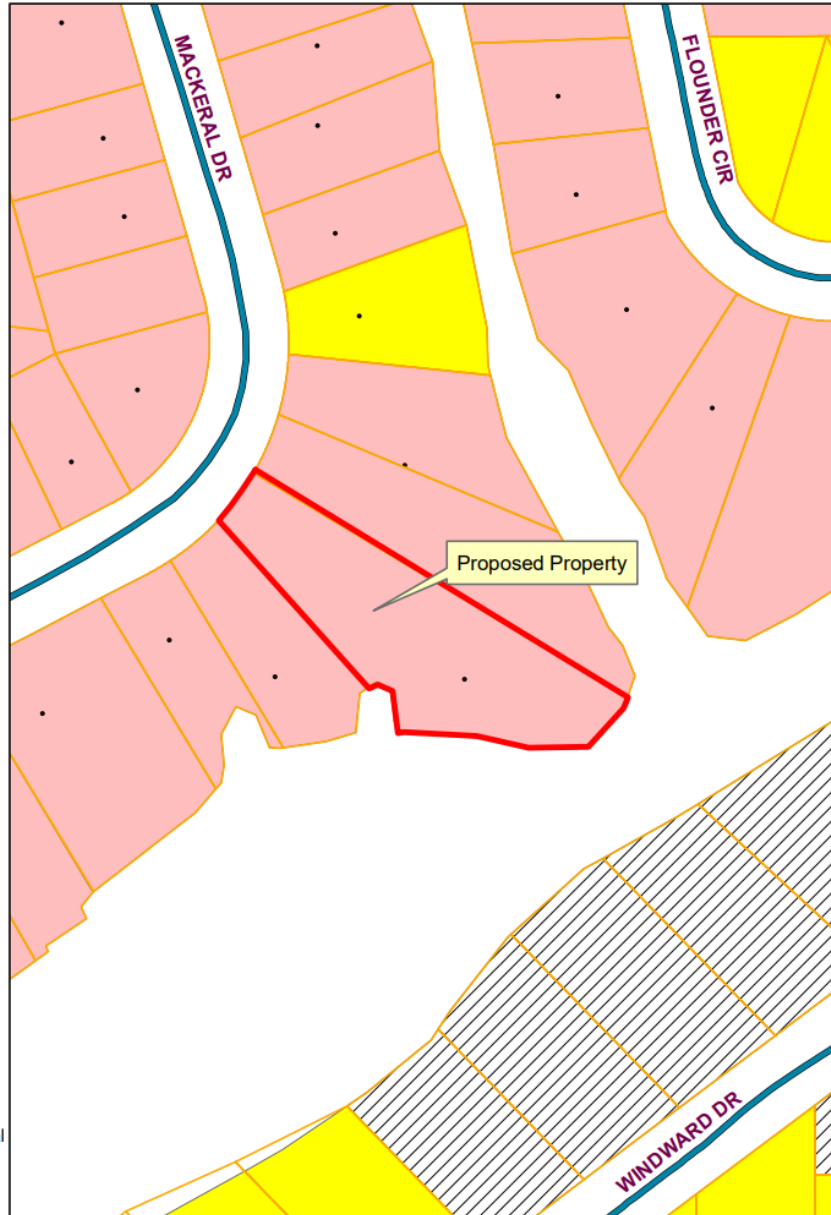

















Exhibit D Future Land-Use

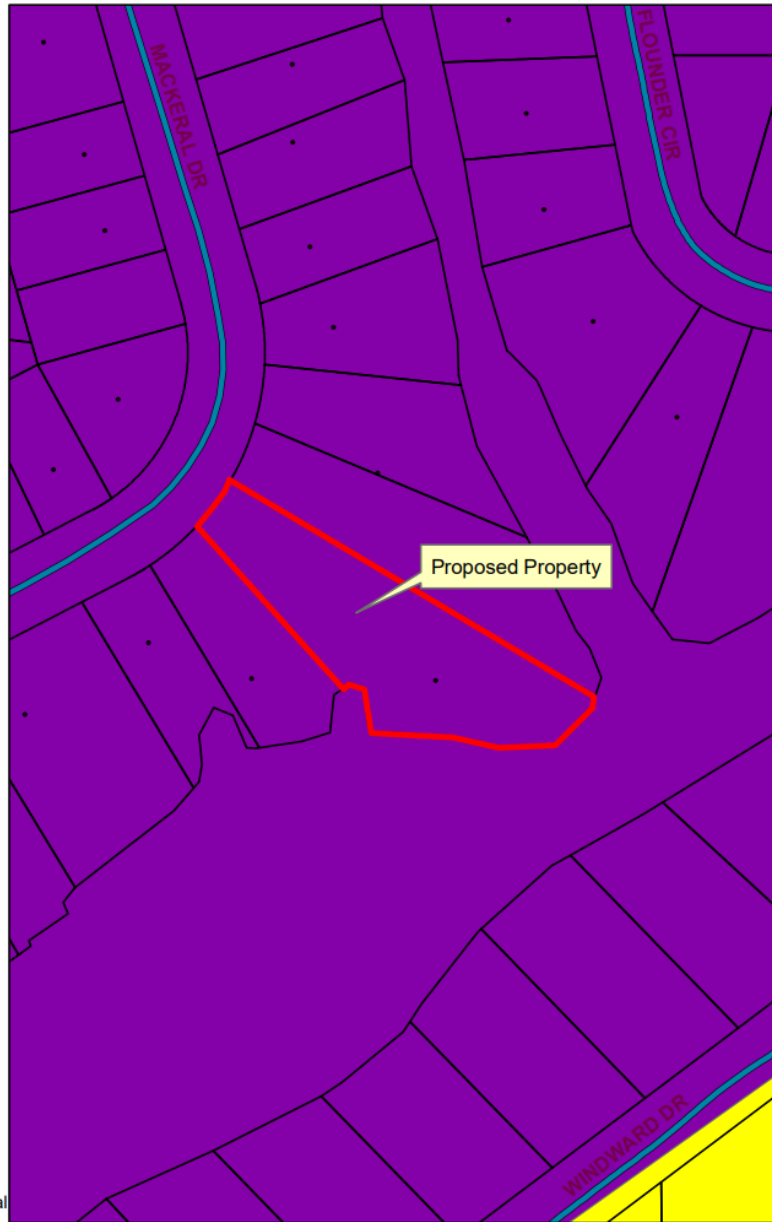
Prepared By:
City of Gautier
Planning Department

Legend

FUTURE LAND USE

FLU_Class

-  Civic
-  high impact commercial
-  Conservation
-  High Density Residential
-  Industrial
-  Low Density Residential
-  Medium Density Residential
-  Mobile Home Residential
-  low impact Commercial
-  Recreational
-  recreational commercial
-  Regional Scale Commercial
-  mixed use residential
-  Town Center
-  Very Low Density Residential



Gautier Planning Commission

Regular Meeting Agenda

April 3, 2025

GPC #25-12-SE

Jason Simpson dba E & J Tire & Automotive

3000 Ladnier Road

VII. NEW BUSINESS

2. Consider a request for a Special Exception that would allow a tire shop in a MURC-1 Mixed Use Recreation Commercial Zoning District. 3000 Ladnier Road, PID #82502180.100. (GPC #25-12-SE)

CITY OF GAUTIER STAFF REPORT

To: Chairman and Members, Planning Commission

From: Scott Ankerson, Planning Director

Date: March 24, 2025

Subject: Consider a request for a Special Exception that would allow a tire shop in a MURC-1 Mixed Use Recreation Commercial Zoning District, 3000 Ladnier Road, PID #82502180.100. (GPC #25-12-SE)

REQUEST:

The Planning Department has received a request from Jason Simpson dba E & J Tire and Automotive for a Special Exception that would allow a tire shop in a MURC-1 Mixed Use Recreation Commercial Zoning District at 3000 Ladnier Road, PID #82502180.100. (GPC #25-12-SE). The application fee of \$250 was paid on March 10, 2025. All public notice requirements have been met.

BACKGROUND:

The request property is zoned MURC-1 Mixed Use Recreation Commercial.

1. Location: 3000 Ladnier Road, PID #82502180.100 (See Exhibit A)
2. General features of the proposed project:
Lot Size: approximately 0.76 acres
3. Potable Water and Wastewater Services: Available at current location
4. Current Zoning (See Exhibit B): MURC-1 Mixed Use Recreation Commercial
5. Current Surrounding Zoning (See Exhibit B): MURC-1 Mixed Use Recreation Commercial to the north and south, R-1 Single Family Residential to the east and west.
6. Current Surrounding Existing Land Use (See Exhibit C): Residential to the north and west, (also a Pregnancy Resource Organization to the west that was given special permission by the city to be located in a Residential District), Vacant to the south and east.
7. Comprehensive Plan Future Land Use Designation (See Exhibit D): High Impact Commercial

DISCUSSION:

The following addresses the review criteria for a Special Exception outlined in Section 4.16.4 of the UDO.

1. Explain how a literal interpretation of the City of Gautier's Unified Development Ordinance would deprive the applicant of rights commonly enjoyed by others of the district in which the property is located, and would work unnecessary hardship upon the applicant?

Applicant Response: *This property has been a tire shop for the past 10 plus years. With the exception of a shop out close to 57, there are no others close or even in Gautier at all, that I am aware of. The citizens of Gautier deserve a quality tire installer who operates within the city limit and is known for honesty, integrity and dedication to their customers.*

Staff Finding: *Unsubstantiated*

2. Explain how the requested Special Exception will be in harmony with the purpose of the City of Gautier's Unified Development Ordinance and will not be injurious to the neighborhood or the general welfare?

Applicant Response: *We, as a business, take pride in our establishment, the property, and surrounding areas. Trash will not pile up, no vehicles in a state of major disrepair will be left outside the building, and noises will be kept to a minimum. We strive to exist in harmony with any and all neighbors and citizens.*

Staff Finding: *Unsubstantiated*

3. Explain how the special circumstances requiring the proposed Special Exception are not results of actions of the applicant.

Applicant Response: *The building sat vacant for more than 180 days after the last business vacated. We are not affiliated with Martin's Tire in any way.*

Staff Finding: *Unsubstantiated*

DETERMINATION OF APPLICABLE LAW:

1. The UDO defines a Special Exception as a relaxation of the terms of the Unified Development Ordinance where such an exception will not be contrary to the public interest, and where, owing to conditions peculiar to the property, a literal enforcement of the ordinance would result in undue hardship. Special Exceptions are necessary when an applicant seeks to establish or expand a use not ordinarily permitted in a specific zoning district. "Special Exceptions" are not transferable from one (1) owner of land to another.
2. Special Exception requires a public hearing before the Planning Commission and approval by the City Council (Section 4.14 of the UDO).

3. Once an application for a Special Exception is submitted to the Planning Department, the procedures outlined in UDO Section 4.14.1 will be followed. At the appropriate time, The Planning Commission will conduct a public hearing to determine whether the applicant meets all relevant criteria, and make a recommendation to City Council pursuant to UDO Section 4.14.4. City Council, pursuant to UDO Section 4.14.4(C), will then consider the matter at its next regularly scheduled meeting and approve or deny the Special Exception.
4. A Special Exception is required for uses not ordinarily permitted in a specific zoning district. Special Exceptions are not permitted by right, and may only be granted when certain criteria are established. (4.16.4)
5. Special Exceptions do not run with the land, and may be revoked by the Planning Department if any of the following circumstances are discovered:
 - A. The property changes ownership
 - B. The property is being utilized in a manner not permitted under the zoning regulations or the special exception; or
 - C. The property ceases to be used for the purpose allowed in the Special Exception for a period of one hundred eighty (180) days during the existence of the Special Exception.

The UDO defines **Hardship** as:

Hardship means the unnecessary hardship that would result from a failure to grant the requested variance or special exception. An unnecessary hardship exists if:

- (1) the land in question cannot yield a reasonable return if used only
 - (a) for a purpose allowed in that zone (applicable to special exceptions), or
 - (b) as permitted by the dimensional requirements of this ordinance (applicable to variances);
- (2) that the plight of the owner is due to unique circumstances of the land for which the variance or special exception is sought; and
- (3) that the use to be authorized by the variance will not alter the essential character of the locality.

RECOMMENDATION & CONCLUSION:

If recommending approval, Planning Commission shall record that the evidence presented meets the "Criteria for Approval" from the UDO as listed above.

The Planning Commission may:

1. Recommend that City Council approve the Special Exception;
2. Recommend that City Council approve the Special Exception with changes; or
3. Recommend that City Council deny the Special Exception.

ATTACHMENTS:

1. Applicant's Exhibit 1 – Application
2. City's Exhibit A – Location Map
3. City's Exhibit B – Existing Zoning Map
4. City's Exhibit C – Existing Land Use Map
5. City's Exhibit D – Future Land Use Map

PLANNING DEPARTMENT
GAUTIER, MISSISSIPPI

25-12-SE

SPECIAL EXCEPTION HEARING APPLICATION

Public Hearing Number _____

TYPE OF REQUEST:	FEE:
Special Exception _____	\$251.00
*Includes \$1.00 filing fee per MS Code §25-60-5	

Special Exception— These uses are not allowed by right and require a recommendation by the Planning Commission and approval of the City Council.

Name of Applicant: Jason Simpson

Name of Business: E and J Tire and Automotive

New Business Address: 3000 Ladhier Rd. Gautier

Mailing Address (if different): _____

Email Address: eandjtire@gmail.com

Phone: 228-234-1742 Cell Phone: 228-304-5193

Reason for request, location and intended use of Property: to put a tire shop in a MURC-1 zone

ATTACHMENTS REQUIRED AS APPLICABLE:

- 1. Diagram of intended use, showing dimensions and distances of property, building with setbacks, parking spaces, entrances and exits.
- 2. Legal descriptions and street address.
- 3. A detailed project narrative that also addresses the questions on the "Criteria for Approval" page of this application.
- 4. Copy of protective covenants or deed restrictions, if any.
- 5. Copies of approvals, or requests for approval, from other agencies, such as, but not limited to, the Mississippi State Department of Health, U.S. Army Corp of Engineers, Mississippi Department of Environmental Quality and Department of Marine Resources.
- 6. Any other information requested by the Planning Director.
- 7. Owner's Consent form if anyone other than 100% sole owner makes application (see attached).

Signature of Applicant: [Signature]

FOR OFFICE USE ONLY	
Date Received	<u>3/10/25</u> Verify as Complete <u>Babs</u>
Fee Amount Received	<u>251.00</u>
Initials of Employee Receiving Application	<u>Babs</u>

OWNERS CONSENT AND DESIGNATION OF AGENCY - SPECIAL EXCEPTION

Date of Application: _____

I, Vanderson Chao, the fee simple owner of the following

described property (give legal description):

COM S/M RR & E/M
Ladnier Rd. Sly Alg Rd.
346' for pop con't Sly
Alg Rd. 160' S 85 Deg E 187'
N 95 Deg E 169' N 87 Deg W 218' to P

hereby petition to the City of Gautier to Grant a Special Exception of _____

and affirm that Jason Simpson

is hereby designated to act as agent on my behalf to accomplish the above.

I certify that I have examined the application and that all statements and diagrams submitted are true and accurate to the best of my knowledge. Further, I understand this application, attachments and fees become part of the official records of the City of Gautier, MS, and are not returnable.

Vanderson Chao
(Owner's Signature)

The foregoing instrument was acknowledged before me this 5 day of _____

March, 20 25 by Vanderson Chao, who

is personally known to me or has produced MSOL as

identification and who did take an oath.

Bridgett Gager Davis
(Printed Name of Notary Public)

[Signature]
(Signature of Notary Public)

Commission # 114941. My commission expires Feb 2, 2028

(Notary's Seal)



Owner
of property
must fill
out sent
notarize

SPECIAL EXCEPTION

Criteria for Approval Special Exception

- A. Explain how a literal interpretation of the City of Gautier's Unified Development Ordinance would deprive the applicant of rights commonly enjoyed by others of the district in which the property is located, and would work unnecessary hardship upon the applicant?
- B. Explain how the requested Special Exception will be in harmony with the purpose and intent of the City of Gautier's Unified Development Ordinance and will not be injurious to the neighborhood or the general welfare?
- C. Explain how the special circumstances requiring the proposed Special Exception are not results of actions of the applicant?

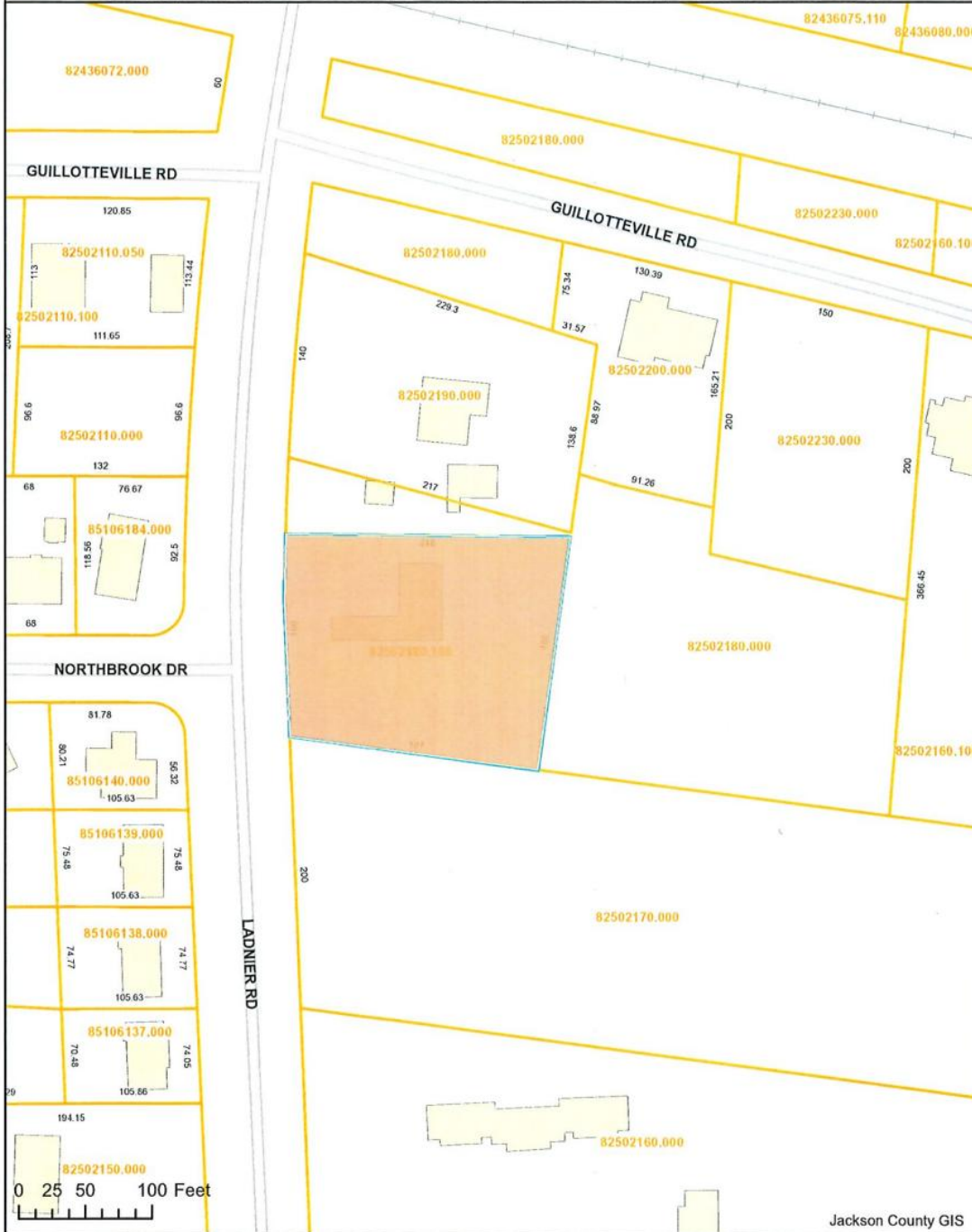
A. This property has been a tire shop for the past 10 plus years. With the exception of a shop out close to 57, there are no others close or even in Gautier at all, that I am aware of. The citizens of Gautier deserve a quality tire installer who operates within the city limit and is known for honesty, integrity and ~~the~~ dedication to their customers.

B. We, as a business, take pride in our establishment, the property, and surrounding areas. Trash will not pile up, no vehicles in a state of major disrepair will be left outside the building, and noises will be kept to a minimum. We strive to exist in harmony with any and all neighbors and citizens.

C. The building sat vacant for more than 180 days after the last business vacated. We are not affiliated with Martin's Tire in any way.

We have already signed a lease for the building as we had to relocate our business very quickly. We previously operated on Highway 90 in Pascagoula, but due to an ongoing city funded project and the unexpected sale of the building we operated out of, we were forced to vacate with only 30 days notice. We began working 15-18 hour days in order to get everything out in our allotted time. We understand that the previous tenant left behind a large number of tires, which, we understand, created a number of issues. We want to assure you that we are not like that and we take pride in keeping our business and surroundings clean, organized, and in compliance with all waste management regulations. We will keep waste tires to a minimum and ensure the property remains well maintained. We appreciate your consideration in this matter and look forward to working with the city in the future.

82502180.100 CHAO VANDERSON & CHAO TIENG



Jackson County GIS

Exhibit A Location Map

Prepared by:
City of Gautier
Planning Department

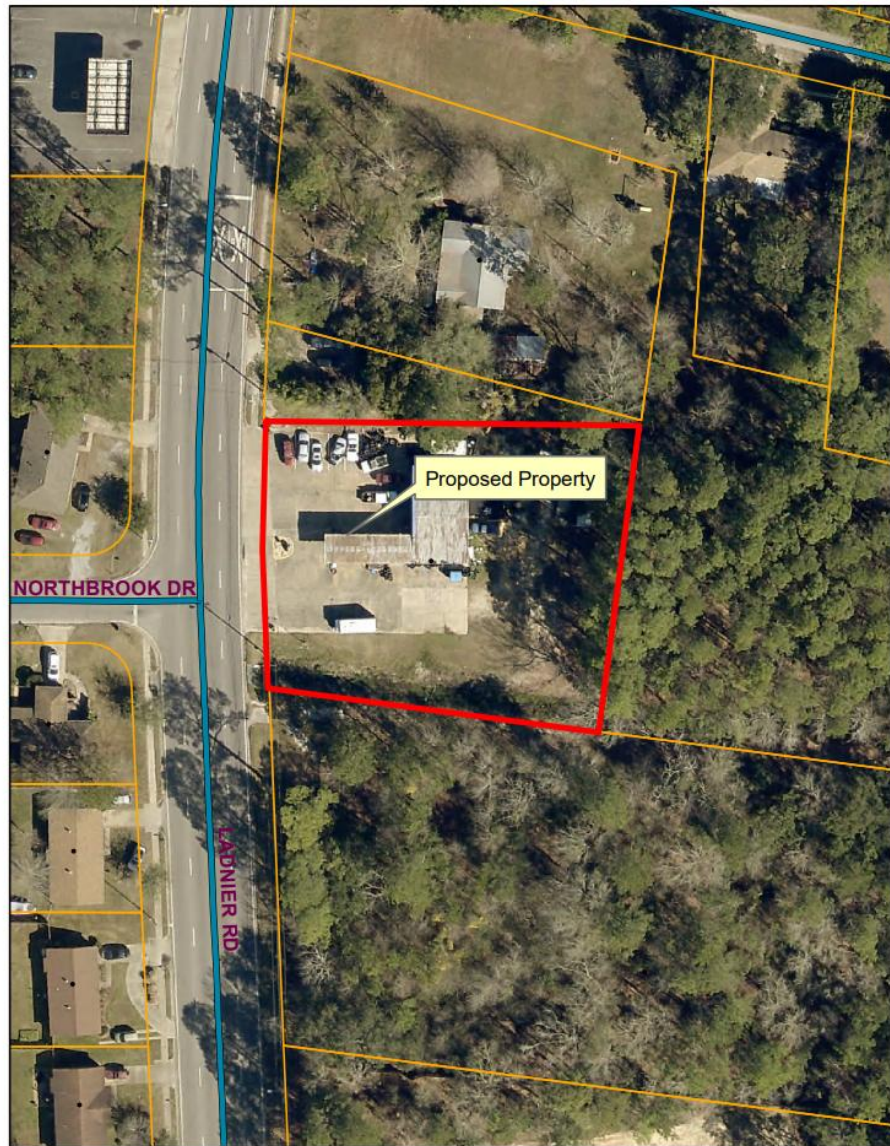


Exhibit B Existing Zoning

Prepared by:
City of Gautier
Planning Department

Legend

Zoning

ZONECODE

- AG
- C-1
- C-2
- C-3
- I-2
- MURC-1
- MURC-2
- MURC-MW
- PL
- PUD
- R-1
- R-2
- R-3
- RE
- TC

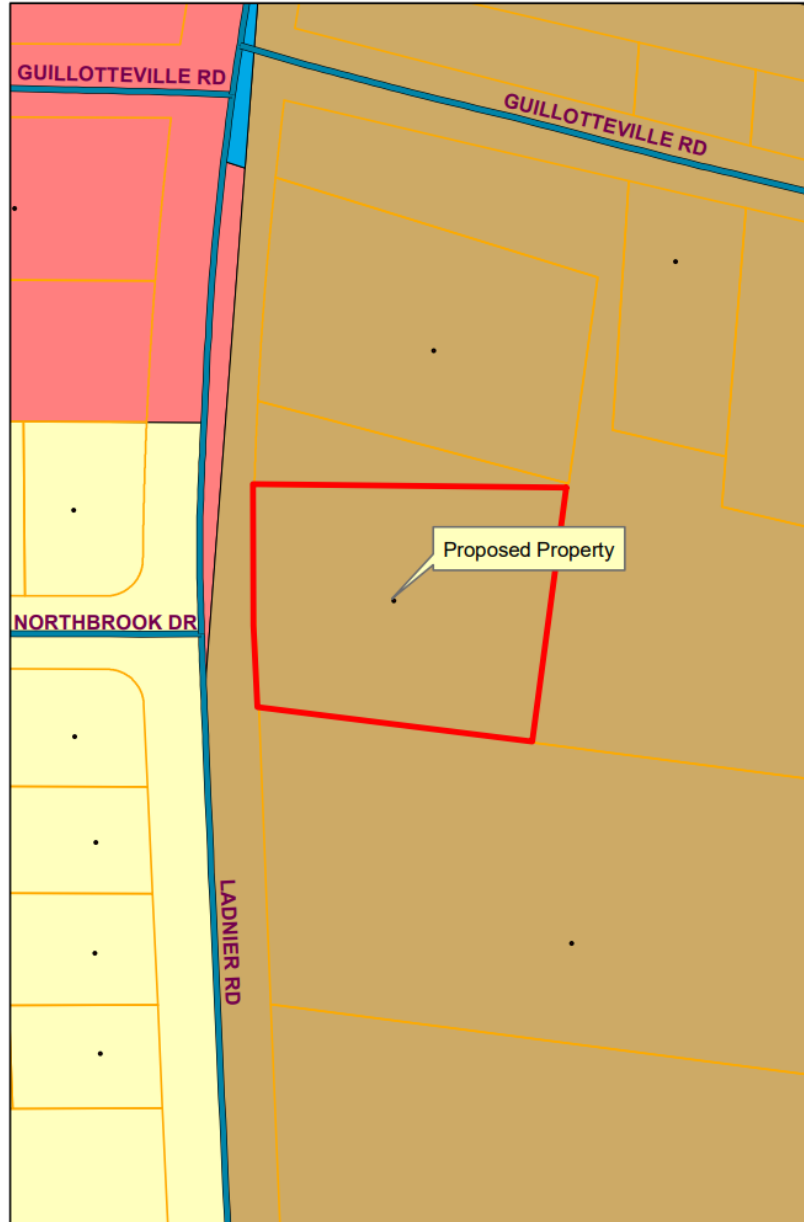


Exhibit C Existing Land-Use

Prepared by:
City of Gautier
Planning Department

Legend

EXISTING LAND USE

ELU_08

- commercial-retail
- conservation
- civic
- industrial
- marina/fish camps
- high density residential
- mobile home
- mobile home park
- medium density residential
- office
- recreation
- very low to low density residential
- utility
- vacant

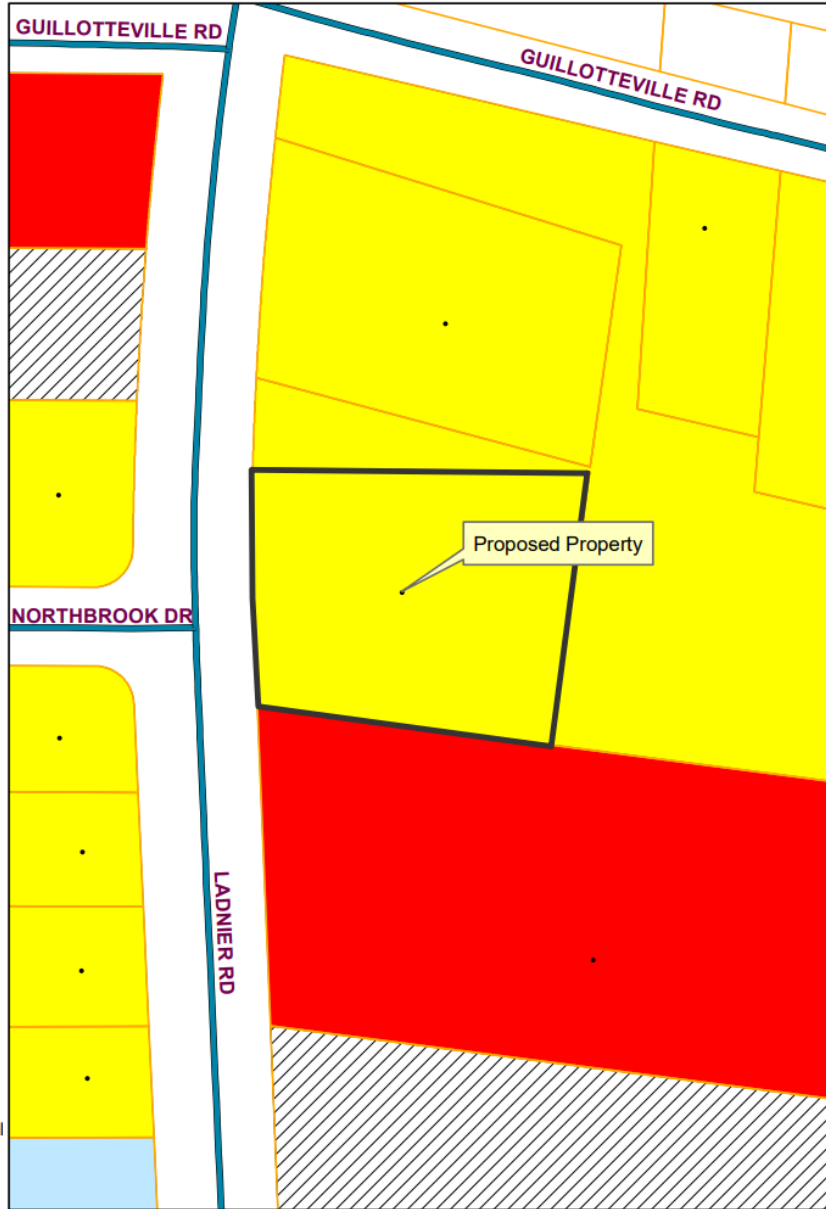


Exhibit D Future Land-Use

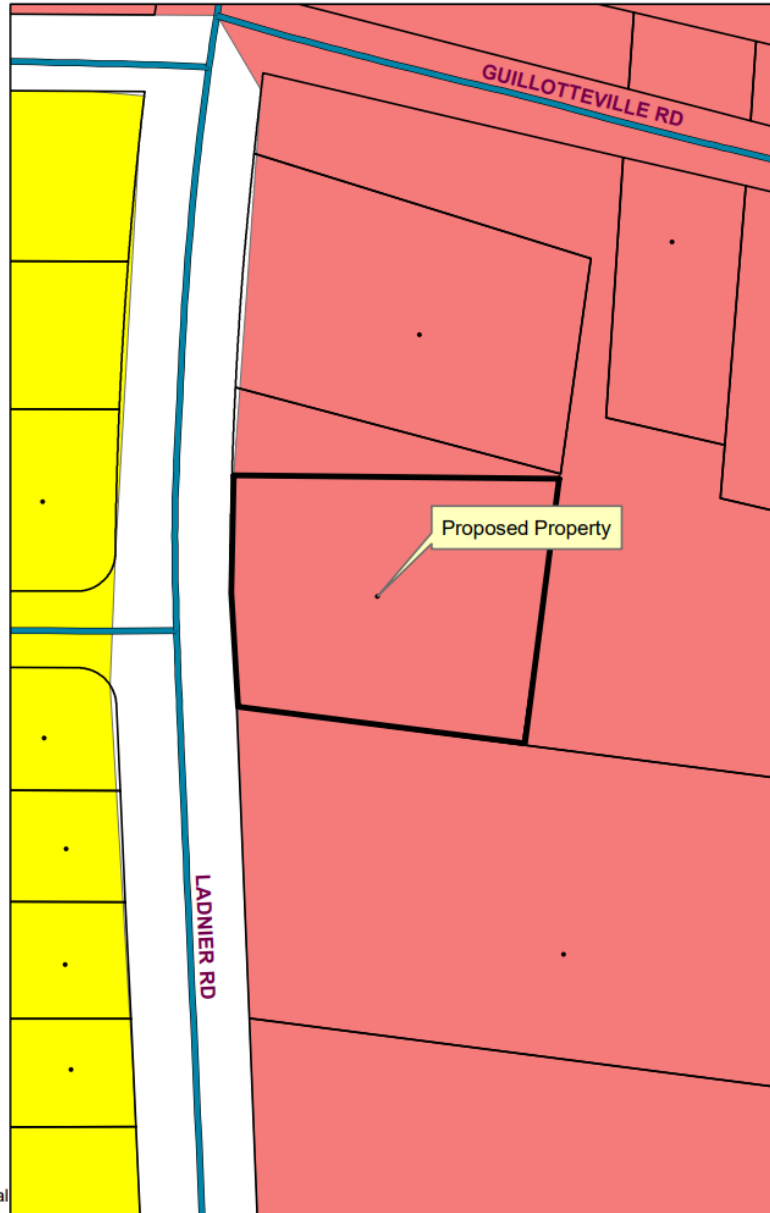
Prepared By:
City of Gautier
Planning Department

Legend

FUTURE LAND USE

FLU_Class

-
- Civic
- high impact commercial
- Conservation
- High Density Residential
- Industrial
- Low Density Residential
- Medium Density Residential
- Mobile Home Residential
- low impact Commercial
- Recreational
- recreational commercial
- Regional Scale Commercial
- mixed use residential
- Town Center
- Very Low Density Residential



Gautier Planning Commission

Regular Meeting Agenda

May 1, 2025

GPC #25-16-VAR

1590 Collin J McRae Drive

VII. NEW BUSINESS

1. Consider a request for a sixty-four foot (64') variance to front yard setback requirements for an accessory structure in a R-1 Low Density Single-Family Residential Zoning District. 1590 Collin J McRae Drive, PID #82511040.000 & #82511020.000, (GPC #25-16-VAR)

**CITY OF GAUTIER
STAFF REPORT**

To: Chairman and Members, Planning Commission

From: Scott Ankerson, Planning Director

Date: April 23, 2025

Subject: Consider a request for a sixty-four foot (64') variance to front yard setback requirements for an accessory structure in a R-1 Low Density Single-Family Residential Zoning District at 1590 Collin J McRae Drive, PID #82511040.000 & #82511020.000. (GPC #25-16-VAR)

REQUEST:

The Planning Department has received a request from Lance H. McCarty for a sixty-four foot (64') variance to front yard setback requirements for an accessory structure in a R-1 Low Density Single-Family Residential Zoning District at 1590 Collin J McRae Drive, PID #82511040.000 & #82511020.000. (GPC #25-16-VAR). The application fee of \$175 was paid on March 17, 2025. All public notice requirements have been met.

BACKGROUND:

The applicant would like to build a 34' x 38' storage building on his adjoining lot. His home sits on a lot that is approximately 0.82 acres, and his back yard is in a flood zone. (AE16 & VE18). His adjoining lot is approximately 24.6 acres. Although the storage building would come in front of the front building line of the house, it would not be anywhere near the front portion of the lot it would be placed on. The Unified Development Ordinance (UDO) requires accessory structures to be behind the front building line of the primary structure. The applicant is asking for a 64' variance to front yard setback requirements for an accessory building.

DISCUSSION:

The applicant is asking for a 64' variance to front yard setback requirements for an accessory structure in a R-1 Low Density Single-Family Residential District. The accessory structure would be on his adjoining lot that is approximately 24.6 acres. Although the accessory structure would come in front of the front building line of the primary structure, it would not be near the front portion of the lot. The UDO requires that an accessory structure be behind the front building line of the primary structure.

DETERMINATION OF APPLICABLE LAW:

The Unified Development Ordinance (UDO) defines **Variations** as:

A Variance is a relaxation of the terms of the Unified Development Ordinance where such Variance will not be contrary to the public interest and where, owing to conditions peculiar to the property, a literal enforcement of the Ordinance would result in an unnecessary or undue hardship. As used in this Ordinance, a Variance is authorized only for height, area and size of structure, or size of yards, separation of uses, open spaces, off-street parking spaces and some subdivision of property. The establishment or expansion of a use not permitted shall not be allowed by Variance.

The UDO defines **Hardship** as:

Hardship means the unnecessary hardship that would result from a failure to grant the requested variance or special exception. An unnecessary hardship exists if:

- (1) the land in question cannot yield a reasonable return if used only
 - (a) for a purpose allowed in that zone (applicable to special exceptions), or
 - (b) as permitted by the dimensional requirements of this ordinance (applicable to variations);
- (2) that the plight of the owner is due to unique circumstances of the land for which the variance or special exception is sought; and
- (3) that the use to be authorized by the variance will not alter the essential character of the locality.

UDO SECTION 4.18: Variance

In certain circumstances, a Variance from the dimensional requirements (i.e. height, setbacks, square footage) of this ordinance may be granted if the applicant can prove that because of physical constraints of the property involved, he is not able to build the same type of structure that other persons with the same zoning classification can build. Variations for uses permitted will not be considered in as much as "use Variations" are not legal in the State of Mississippi.

Most Variations must be granted by the City Council; however, certain minor Variations may be granted by the Economic Development Director in accordance with *Section 4.18.3* below.

4.18.1 Who May Initiate

A request for a Variance may be initiated by the property owner or agent of the owner provided that said property has not been denied a previous request for a Variance for the same property or portion of property within the past twelve (12) months.

4.18.2 Application for Variance

Applications for a Variance (from dimensional requirements) may be filed on the appropriate application available from the Economic Development/Planning Department and shall include all requested information, attachments and submittals:

4.18.3 Administrative Variances

The following dimensional variances may be granted by the Economic Development Director at his/her discretion (Note: Within the COR, Corridor Overlay District, applicants shall be required to mitigate a requested dimensional variance in accordance with the Tier Land Use Provisions in Section 5.11):

- A. 30% of required off-street parking spaces and/or
- B. 30% of required setbacks from property lines

4.18.4 Criteria for Approval

The Variance application shall demonstrate the following:

- A. That special conditions and circumstances exist which are peculiar to this particular site (lot or parcel), structure or building involved and which are not applicable to other sites (lots or parcels) or structures or buildings in the same district;
- B. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the provisions of this Ordinance;
- C. That the special conditions and circumstances do not result from actions of the applicant; and
- D. That granting the Variance requested will not confer upon the applicant any special privilege that is denied by this Ordinance to other similar sites (lots or parcels) structures or buildings in the same district.

RECOMMENDATION & CONCLUSION:

If recommending approval, Planning Commission shall record that the evidence presented meets all "Criteria for Approval" from the UDO as listed above.

The Planning Commission may:

1. Recommend that City Council approve the variance request as presented;
2. Recommend that City Council approve the variance request with changes; or
3. Recommend that City Council deny variance request.

ATTACHMENTS:

1. Applicant's Exhibit 1 – Application
2. City's Exhibit A – Location Map
3. City's Exhibit B – Existing Zoning Map
4. City's Exhibit C – Existing Land Use Map
5. City's Exhibit D – Future Land Use Map

PLANNING DEPARTMENT
PUBLIC HEARING APPLICATION

Public Hearing Number

25-16-VAR

<u>TO BE HEARD BY GAUTIER PLANNING COMMISSION:</u>		<u>FEE:</u>
Variance	<u>1</u>	\$176.00
*Includes \$1.00 filing fee per MS Code §25-60-5		

Name of Applicant: LANCE H. McCLARTY

Name of Business: _____ Phone: 228-218-2444

Property Address: 1540 COLUMBIA BLVD Mailing Address (if Different): _____

E-Mail Address: LANCEM@FLETCHERCONST.COM

Reason for request, location and intended use of Property: STORAGE BUILDING located in front of House

ATTACHMENTS REQUIRED AS APPLICABLE:

- 1. Diagram of intended use, showing dimensions and distances of property, building with setbacks, parking spaces, entrances and exits.
- 2. A detailed project narrative.
- _____ 3. Copy of protective covenants or deed restrictions, if any.
- _____ 4. Copies of approvals, or requests for approval, from other agencies, such as, but not limited to, the Mississippi State Department of Health, U.S. Army Corp of Engineers, Mississippi Department of Environmental Quality and Department of Marine Resources.
- _____ 5. Any other information requested by the Planning Director.

Signature of Applicant: [Signature] Date of Application: 3/14/25

FOR OFFICE USE ONLY	
Date Received	<u>3/17/25</u> Verify as Complete <u>Ba</u>
Fee Amount Received	<u>176.00</u> Initials of Employee Receiving Application <u>Bals</u>

VARIANCE

Criteria for Approval

1. What special conditions and circumstances exist which are peculiar to this particular site (lot or parcel), structure or building involved and which are not applicable to other sites (lots or parcels), or structures or buildings in the same district?

SHAPE OF LOT AND ELEVATION CHANGE TO THE BACK.

2. Are these special conditions and circumstances a result of your actions? Explain.

NO

3. How will the literal interpretation of the provisions of this Ordinance deprive you of rights commonly enjoyed by other properties in the same district under the provisions of this Ordinance? Explain.

THE SIZE OF LOT = 33 ACRES

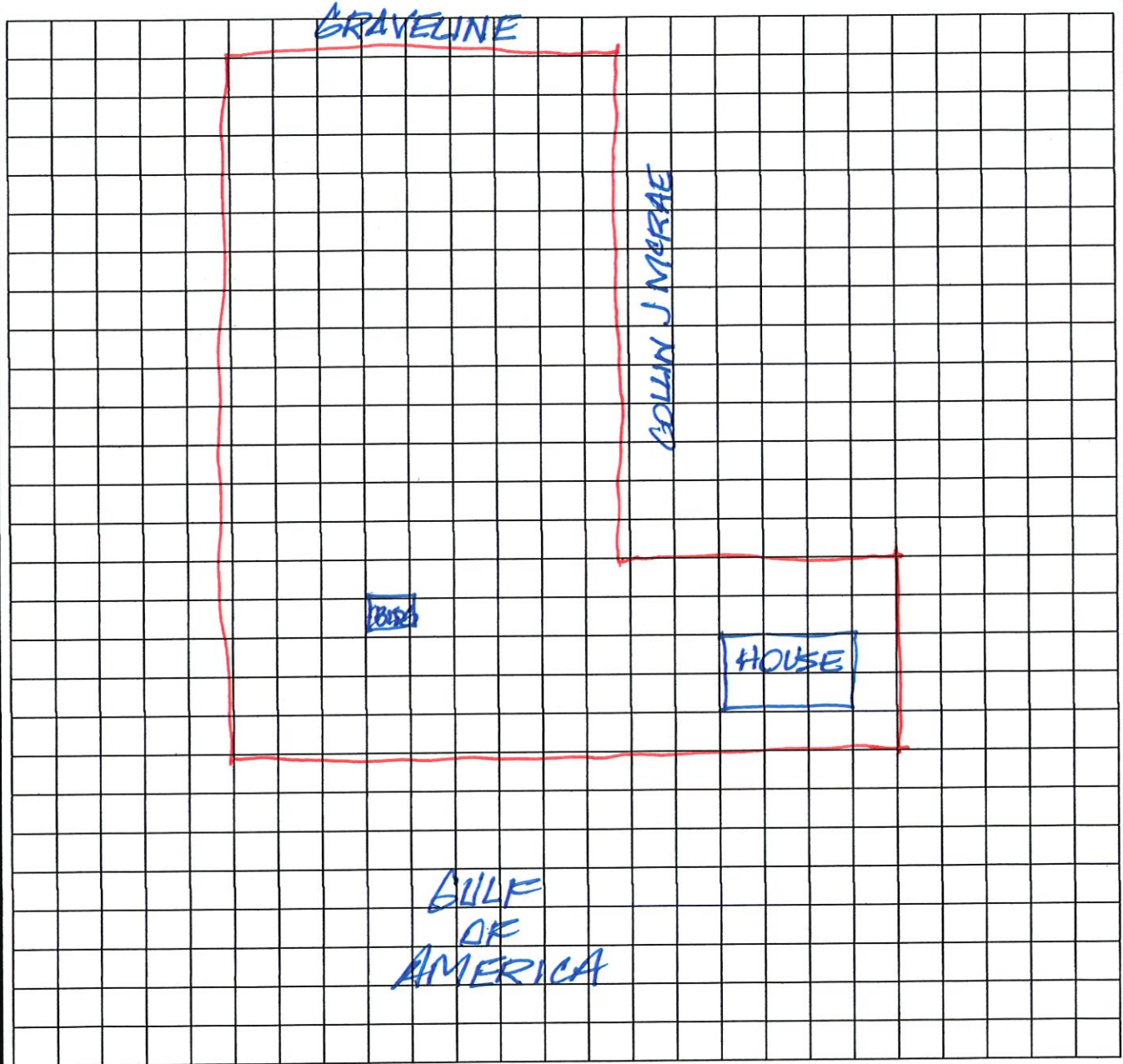
4. Will the granting of the Variance requested confer upon you any special privilege that is denied by this Ordinance to other similar sites (lots or parcels), structures or buildings in the same district? Explain.

NO

NARRATIVE

A STORAGE BUILDING WILL BE PLACED SLIGHTLY BEYOND THE FRONT LINE OF THE HOUSE BUT WELL BEHIND THE FRONT LINE OF THE PROPERTY.

DIAGRAM



N.T.S.

Google Maps



Imagery ©2025 Airbus, Maxar Technologies, Map data ©2025 50 ft

82511040.000 MCCARTY LANCE H



0 100 200 400 Feet



Jackson County GIS

82511020.000 MCCARTY LANCE H



0 50 100 200 Feet
|-----|-----|-----|-----|

Jackson County GIS

Exhibit A Location Map

Prepared by:
City of Gautier
Planning Department

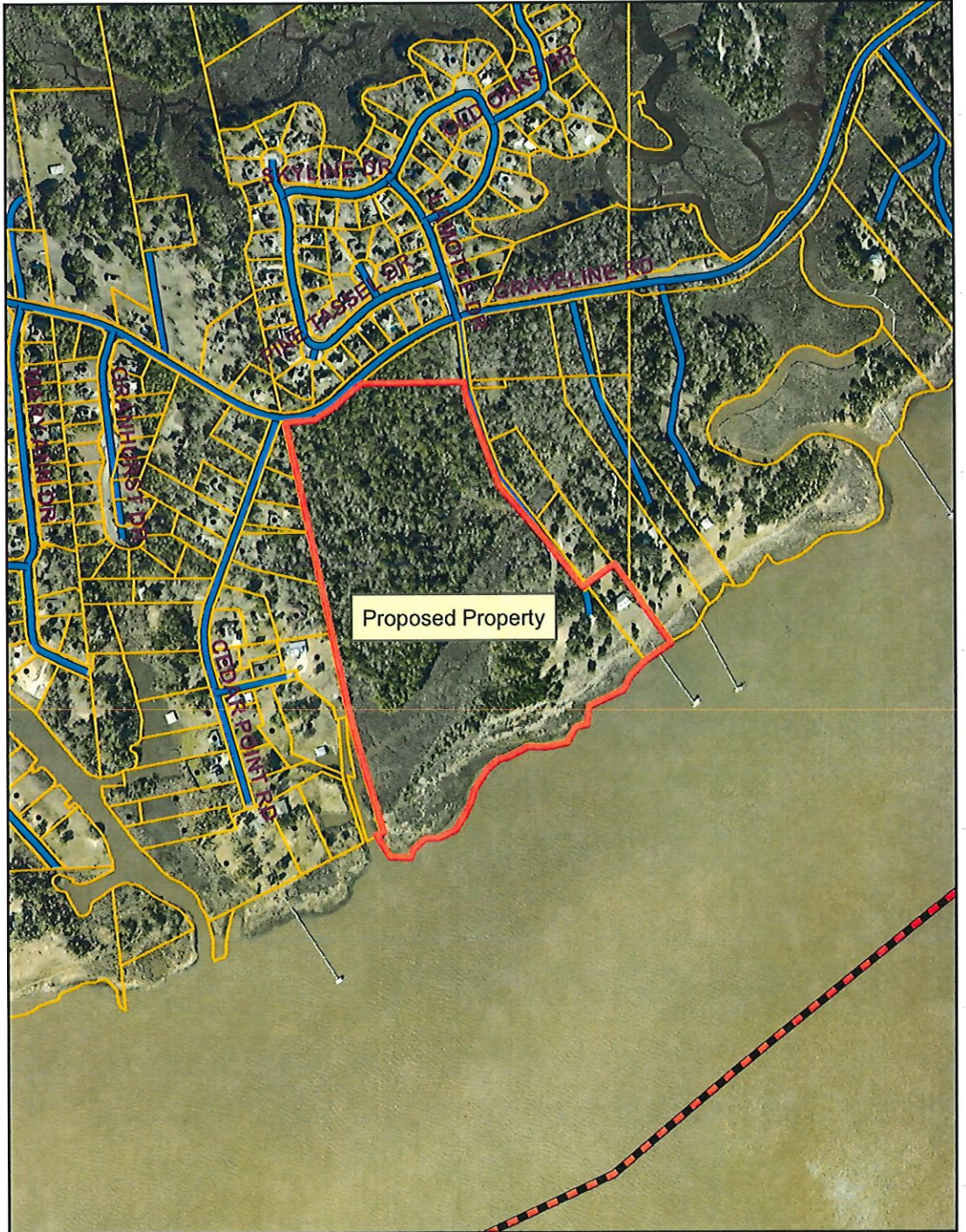


Exhibit B

Existing Zoning

Prepared by:
 City of Gautier
 Planning Department

Legend

Zoning

ZONECODE

- AG
- C-1
- C-2
- C-3
- I-2
- MURC-1
- MURC-2
- MURC-MW
- PL
- PUD
- R-1
- R-2
- R-3
- RE
- TC

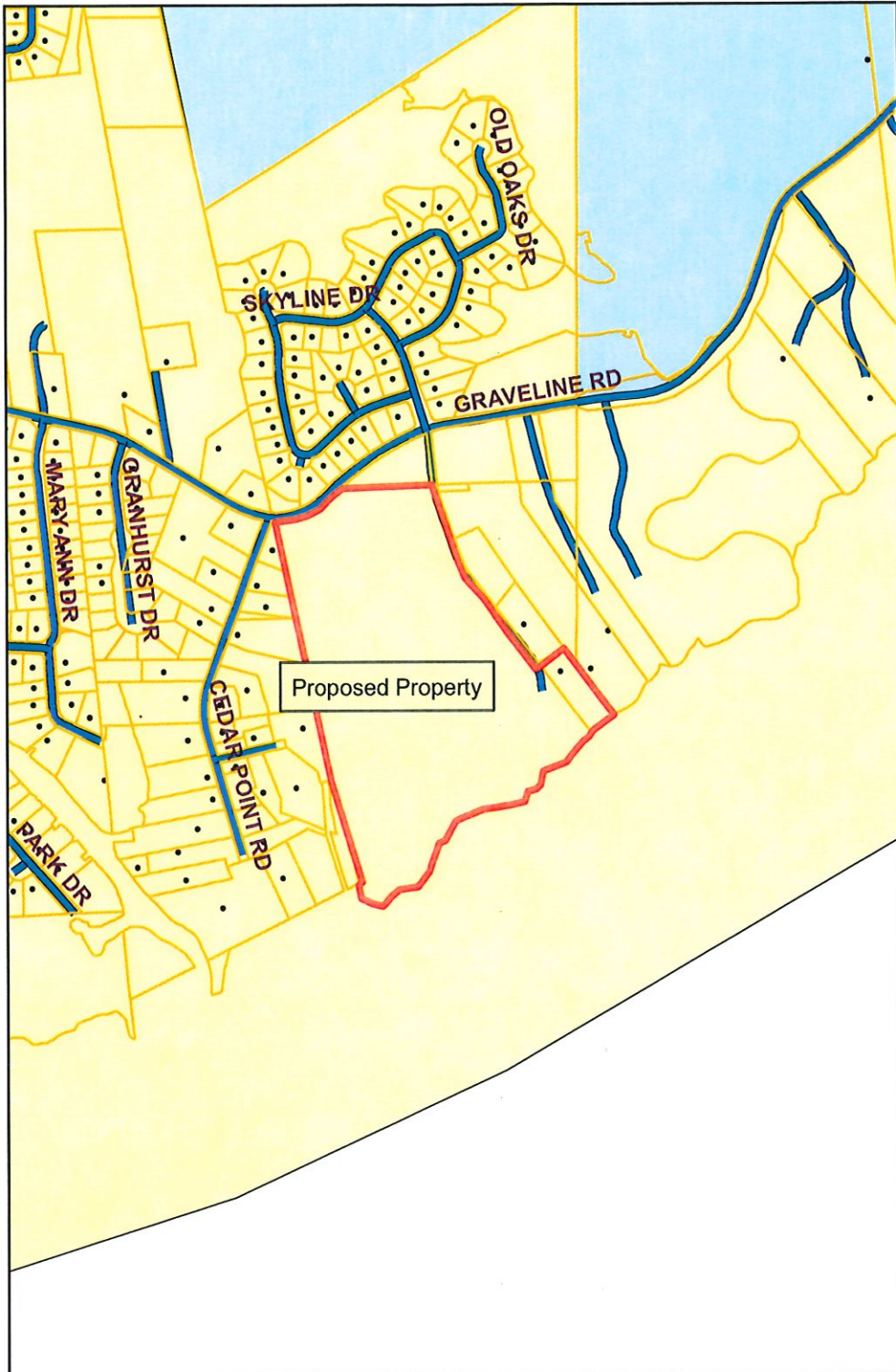


Exhibit C Existing Land-Use

Prepared by:
City of Gautier
Planning Department

Legend

EXISTING LAND USE

ELU_08

- commercial-retail
- conservation
- civic
- industrial
- marina/fish camps
- high density residential
- mobile home
- mobile home park
- medium density residential
- office
- recreation
- very low to low density residential
- utility
- vacant

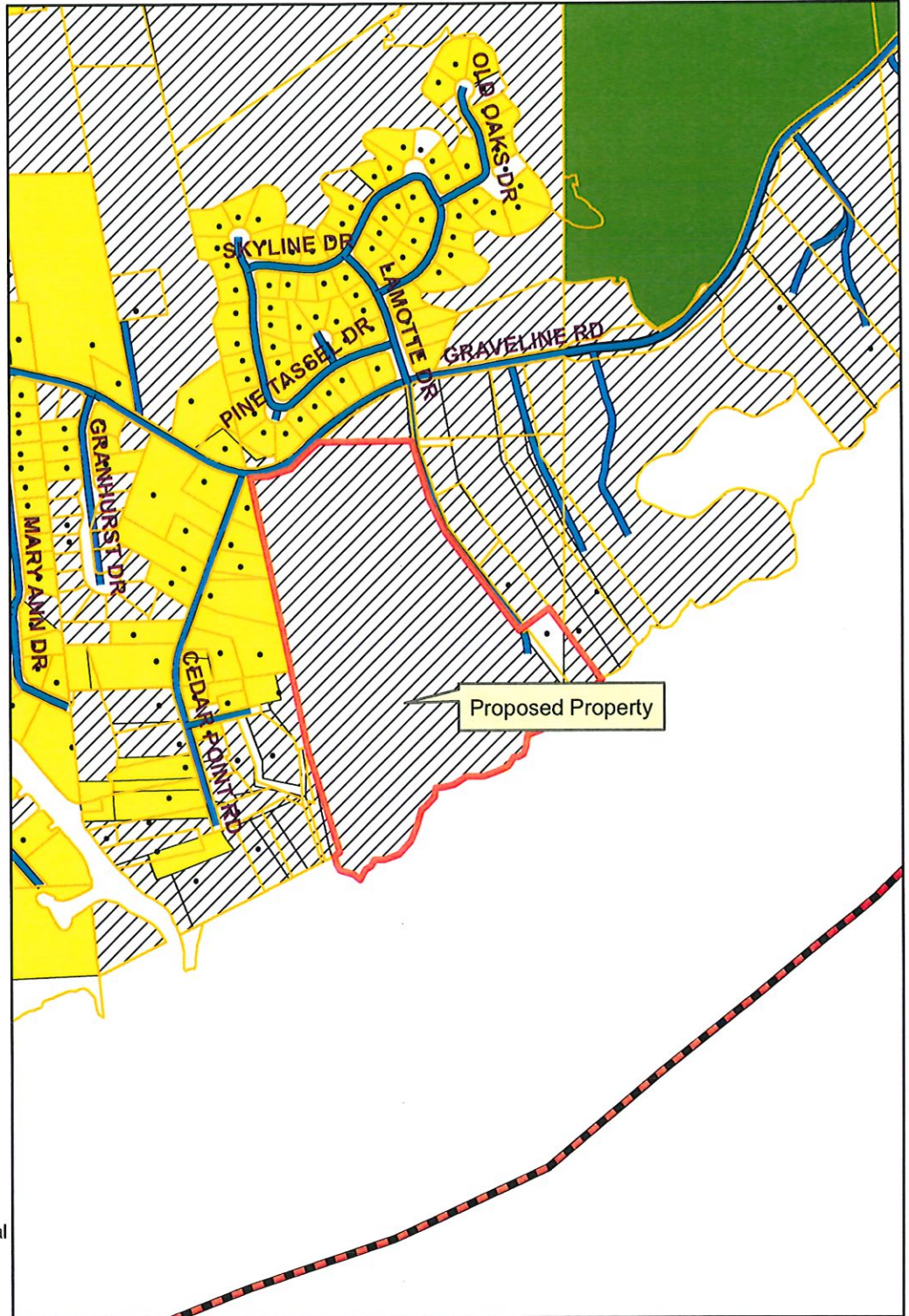


Exhibit D Future Land-Use

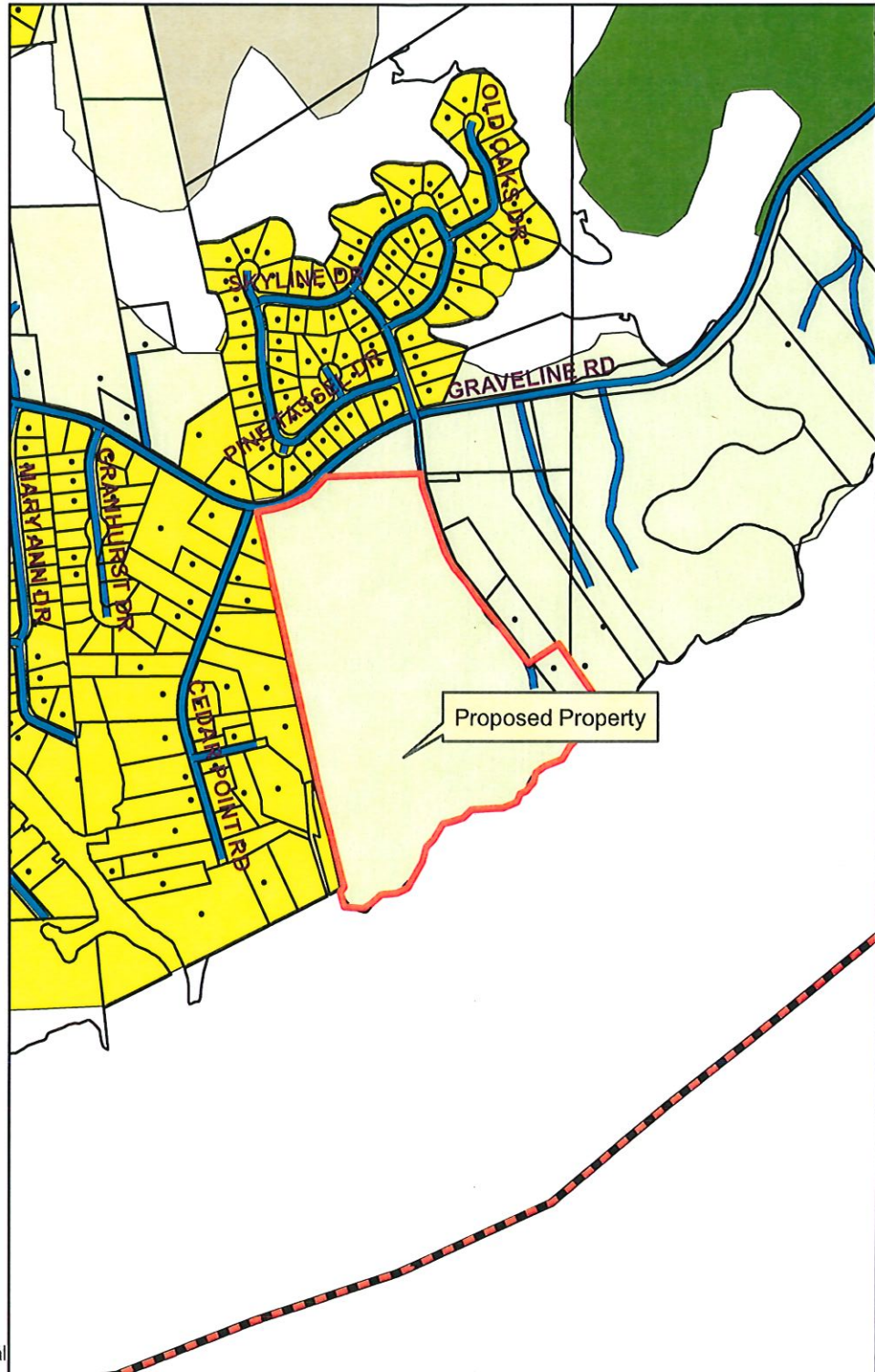
Prepared By:
City of Gautier
Planning Department

Legend

FUTURE LAND USE

FLU_Class

- high impact commercial
- Civic
- Conservation
- High Density Residential
- Industrial
- Low Density Residential
- Medium Density Residential
- Mobile Home Residential
- low impact Commercial
- Recreational
- recreational commercial
- Regional Scale Commercial
- mixed use residential
- Town Center
- Very Low Density Residential



Gautier Planning Commission

Regular Meeting Agenda

May 1, 2025

GPC #25-17-SE

Danny Taylor dba Air Masters Mechanical

Old Spanish Trail, PID #82435240.001

VII. NEW BUSINESS

2. Consider a request for a **SPECIAL EXCEPTION** that would allow construction of a building to be utilized as a warehouse in a TC Town Center Zoning District. PID #82435240.001, Old Spanish Trail. (GPC #25-17-SE)

CITY OF GAUTIER STAFF REPORT

To: Chairman and Members, Planning Commission

From: Scott Ankerson, Planning Director

Date: April 23, 2025

Subject: Consider a request for a Special Exception that would allow construction of a building to be utilized as a warehouse in a TC Town Center Zoning District. PID #82435240.001, Old Spanish Trail. (GPC #25-17-SE)

REQUEST:

The Planning Department has received a request from Danny Taylor dba Air Masters Mechanical for a Special Exception that would allow construction of a building to be utilized as a warehouse in a TC Town Center Zoning District at PID #82435240.001, Old Spanish Trail. (GPC #25-17-SE). The application fee of \$250 was paid on March 18, 2025. All public notice requirements have been met.

BACKGROUND:

The request property is zoned TC Town Center.

1. Location: Old Spanish Trail, PID #82435240.001 (See Exhibit A)
2. General features of the proposed project:
Lot Size: approximately 7.74 acres
3. Potable Water and Wastewater Services: Available at current location
4. Current Zoning (See Exhibit B): TC Town Center
5. Current Surrounding Zoning (See Exhibit B): TC Town Center to the north, east, and west; C-2 Community Commercial to the south; I-2 Industrial to the southeast.
6. Current Surrounding Existing Land Use (See Exhibit C): Vacant to the west, Industrial to the east and southeast, Commercial-retail to the south and north.
7. Comprehensive Plan Future Land Use Designation (See Exhibit D): Town Center

DISCUSSION:

The following addresses the review criteria for a Special Exception outlined in Section 4.16.4 of the UDO.

1. Explain how a literal interpretation of the City of Gautier's Unified Development Ordinance would deprive the applicant of rights commonly enjoyed by others of the district in which the property is located, and would work unnecessary hardship upon the applicant?

Applicant Response: *The applicant's proposed use is compatible with surrounding properties and would not detract from the character of the area, imposing a rigid interpretation of the zoning laws would create an undue hardship.*

Staff Finding: *A commercial warehouse would be allowed by right in an Industrial District. Although this parcel is located in a Town Center zoned district, there are Industrial zoned parcels and uses in the immediate area on the opposite side of Old Spanish Trail.*

2. Explain how the requested Special Exception will be in harmony with the purpose of the City of Gautier's Unified Development Ordinance and will not be injurious to the neighborhood or the general welfare?

Applicant Response: *The requested Special Exception for a warehouse business is in harmony with the intent of the UDO because it promotes sustainable development, economic growth, and compatibility with surrounding land uses. It will not be injurious to the neighborhood or the general welfare, implements necessary mitigation measures, and ensures that the project complements the broader goals for the area. Therefore, granting the special exception is beneficial for both the applicant and the community.*

Staff Finding: *Unsubstantiated*

3. Explain how the special circumstances requiring the proposed Special Exception are not results of actions of the applicant.

Applicant Response: *The special circumstances necessitating the Special Exception are not due to the actions of the applicant. They arise from the limitations of the existing zoning and changes in the surrounding area that were not anticipated when the zoning was initially set. The applicant is seeking a special exception in good faith, recognizing that the current zoning does not fully accommodate the property's potential use in light of the broader development*

trends and conditions. Therefore, the special exception is being requested due to factors beyond the applicant's control.

Staff Finding: *Unsubstantiated*

DETERMINATION OF APPLICABLE LAW:

1. The UDO defines a Special Exception as a relaxation of the terms of the Unified Development Ordinance where such an exception will not be contrary to the public interest, and where, owing to conditions peculiar to the property, a literal enforcement of the ordinance would result in undue hardship. Special Exceptions are necessary when an applicant seeks to establish or expand a use not ordinarily permitted in a specific zoning district. "Special Exceptions" are not transferable from one (1) owner of land to another.
2. Special Exception requires a public hearing before the Planning Commission and approval by the City Council (Section 4.14 of the UDO).
3. Once an application for a Special Exception is submitted to the Planning Department, the procedures outlined in UDO Section 4.14.1 will be followed. At the appropriate time, The Planning Commission will conduct a public hearing to determine whether the applicant meets all relevant criteria, and make a recommendation to City Council pursuant to UDO Section 4.14.4. City Council, pursuant to UDO Section 4.14.4(C), will then consider the matter at its next regularly scheduled meeting and approve or deny the Special Exception.
4. A Special Exception is required for uses not ordinarily permitted in a specific zoning district. Special Exceptions are not permitted by right, and may only be granted when certain criteria are established. (4.16.4)
5. Special Exceptions do not run with the land, and may be revoked by the Planning Department if any of the following circumstances are discovered:
 - A. The property changes ownership
 - B. The property is being utilized in a manner not permitted under the zoning regulations or the special exception; or
 - C. The property ceases to be used for the purpose allowed in the Special Exception for a period of one hundred eighty (180) days during the existence of the Special Exception.

The UDO defines **Hardship** as:

Hardship means the unnecessary hardship that would result from a failure to grant the requested variance or special exception. An unnecessary hardship exists if:

- (1) the land in question cannot yield a reasonable return if used only
 - (a) for a purpose allowed in that zone (applicable to special exceptions), or
 - (b) as permitted by the dimensional requirements of this ordinance (applicable to variances);
- (2) that the plight of the owner is due to unique circumstances of the land for which the variance or special exception is sought; and
- (3) that the use to be authorized by the variance will not alter the essential character of the locality.

RECOMMENDATION & CONCLUSION:

If recommending approval, Planning Commission shall record that the evidence presented meets the "Criteria for Approval" from the UDO as listed above.

The Planning Commission may:

1. Recommend that City Council approve the Special Exception;
2. Recommend that City Council approve the Special Exception with changes; or
3. Recommend that City Council deny the Special Exception.

ATTACHMENTS:

1. Applicant's Exhibit 1 – Application
2. City's Exhibit A – Location Map
3. City's Exhibit B – Existing Zoning Map
4. City's Exhibit C – Existing Land Use Map
5. City's Exhibit D – Future Land Use Map

PLANNING DEPARTMENT
GAUTIER, MISSISSIPPI

SPECIAL EXCEPTION HEARING APPLICATION

Public Hearing Number

25-17-5E

TYPE OF REQUEST:	FEE:
Special Exception _____	\$251.00
*Includes \$1.00 filing fee per MS Code §25-60-5	

Special Exception– These uses are not allowed by right and **require** a recommendation by the Planning Commission and approval of the City Council.

Name of Applicant: Danny Taylor

Name of Business: Air Masters Mechanical

Address: 1633 US-90, Gautier, MS 39553

Mailing Address (if different): _____

Email Address: danny@airmastersmechanical.com

Phone: (228-424-2743) Cell Phone: 228-381-6301

Reason for request, location and intended use of Property: request to allow the construction of a building to be utilized as a warehouse

at PID 82435240.001
Old Spanish Trail

ATTACHMENTS REQUIRED AS APPLICABLE:

- 1. Diagram of intended use, showing dimensions and distances of property, building with setbacks, parking spaces, entrances and exits.
- 2. Legal descriptions and street address.
- 3. A detailed project narrative that also addresses the questions on the "Criteria for Approval" page of this application.
- 4. Copy of protective covenants or deed restrictions, if any.
- 5. Copies of approvals, or requests for approval, from other agencies, such as, but not limited to, the Mississippi State Department of Health, U.S. Army Corp of Engineers, Mississippi Department of Environmental Quality and Department of Marine Resources.
- 6. Any other information requested by the Planning Director.
- 7. Owner's Consent form if anyone other than 100% sole owner makes application (see attached).

Signature of Applicant: [Signature]

<u>3/18/25</u> FOR OFFICE USE ONLY	
Date Received <u>4/3/25</u>	Verify as Complete <u>Scott</u>
Fee Amount Received <u>251.00</u>	
Initials of Employee Receiving Application <u>AB Bds</u>	

TC

SPECIAL EXCEPTION

Criteria for Approval Special Exception

- A. Explain how a literal interpretation of the City of Gautier's Unified Development Ordinance would deprive the applicant of rights commonly enjoyed by others of the district in which the property is located, and would work unnecessary hardship upon the applicant?
 - B. Explain how the requested Special Exception will be in harmony with the purpose and intent of the City of Gautier's Unified Development Ordinance and will not be injurious to the neighborhood or the general welfare?
 - C. Explain how the special circumstances requiring the proposed Special Exception are not results of actions of the applicant?
-

SPECIAL EXCEPTION CRITERIA:

A.

The applicant's proposed use is compatible with surrounding properties and would not detract from the character of the area, imposing a rigid interpretation of the zoning laws would create an undue hardship.

B.

The requested Special Exception for a warehouse business is in harmony with the intent of the UDO because it promotes sustainable development, economic growth, and compatibility with surrounding land uses. It will not be injurious to the neighborhood or the general welfare, implements necessary mitigation measures, and ensures that the project complements the broader goals for the area. Therefore, granting the special exception is beneficial for both the applicant and the community.

C.

The special circumstances necessitating the Special Exception are not due to the actions of the applicant. They arise from the limitations of the existing zoning and changes in the surrounding area that were not anticipated when the zoning was initially set. The applicant is seeking a special exception in good faith, recognizing that the current zoning does not fully accommodate the property's potential use in light of the broader development trends and conditions. Therefore, the special exception is being requested due to factors beyond the applicant's control.

**EXCERPT FROM GAUTIER'S UNIFIED DEVELOPMENT ORDINANCE
CONCERNING SPECIAL EXCEPTIONS**

SECTION 4.16: Special Exception

A request for a Special Exception may be initiated by the owner or agent of the owner provided that said property has not been denied a previous request for a Special Exception for the same property or portion of property within the past twelve (12) months.

4.16.1 Application for Special Exception

Applications for a Special Exception may be filed on the appropriate application available from the Planning Department and shall include all requested information, attachments, and submittals.

4.16.2 Procedure

Once an application for a Special Exception is submitted to the Planning Department, the procedures outlined in UDO Section 4.14.1 will be followed. At the appropriate time, The Planning Commission will conduct a public hearing to determine whether the applicant meets all relevant criteria outlined below, and make a recommendation to City Council pursuant to UDO Section 4.14.4 (A and B). City Council, pursuant to UDO Section 4.14.4(C), will then consider the matter at its next regularly scheduled meeting and approve or deny the Special Exception.

4.16.3 Notice of Public Hearing

Notice of the public hearing for the Special Exception shall be made in a newspaper of regular and general circulation in the city at least fifteen (15) days prior to the public hearing, and a notice shall be posted at City Hall and the effected property for the benefit of the public. Additionally, all adjoining property owners shall be notified by first class mail in accordance with UDO Section 4.14.3.

4.16.4 Criteria for Approval

A Special Exception is required for uses not ordinarily permitted in a specific zoning district. Special Exceptions are not permitted by right, and may only be granted when the following criteria are established:

- A. That a literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by others of the district in which the property is located, and that interpretation of this ordinance would work unnecessary hardship upon the applicant;
- B. That the requested Special Exception will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or the general welfare; and
- C. That the special circumstances are not the result of actions of the applicant.

4.16.5 Limitations and Restrictions

Special Exceptions do not run with the land, and may be revoked by the Planning Department if any of the following circumstances are discovered:

- A. The property changes ownership;
- B. The property is being utilized in a manner not permitted under the zoning regulations or the special exception; or
- C. The property ceases to be used for the purpose allowed in the Special Exception for a period of one hundred eighty (180) consecutive days during the existence of the Special Exception.

NOTES:

1. ALL BEARINGS WERE BASED ON RECORD BEARING OF SOUTH LANE OF U.S. HWY. 90.
2. DATE OF FIELD SURVEY 06/06/2003 & 10/14/2015
3. FLOOD STATEMENT:
THIS PROPERTY IS LOCATED IN FLOOD ZONE "X" (AREAS DETERMINED TO BE OUTSIDE 500-YEAR FLOOD PLAIN) ACCORDING TO FLOOD INSURANCE RATE MAP 280332 0005 D DATED DECEMBER 3, 1987.
4. IN PROVIDING THIS BOUNDARY SURVEY NO ATTEMPT HAS BEEN MADE TO OBTAIN OR SHOW DATA CONCERNING EXISTENCE, SIZE, DEPTH, CONDITION, CAPACITY OR LOCATION OF ANY UTILITY EXISTING ON THE SITE, WHETHER PRIVATE, MUNICIPAL OR PUBLIC OWNED EXCEPT AS SHOWN HEREON.
5. NO ABSTRACT OF TITLE, NOR TITLE COMMITMENT, OR RESULTS OF A TITLE SEARCH WERE FURNISHED TO THE SURVEYOR. ALL DOCUMENTS OF RECORD REVIEWED ARE NOTED HEREON. THERE MAY EXIST OTHER DOCUMENTS OF RECORD THAT MAY AFFECT THIS SURVEYED PARCEL.
6. THE PROFESSIONAL SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS OF RECORD, ENCUMBRANCES, RESTRICTIVE COVENANTS, OWNERSHIP TITLE EVIDENCE, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
7. THIS SURVEY IS VALID ONLY IF THE DRAWING INCLUDES THE ORIGINAL SEAL AND ORIGINAL SIGNATURE OF THE SURVEYOR.
8. (R) = RECORD, (S) = SURVEY

NE CORNER OF SE 1/4, OF SECTION 35, T7S, R7W, JACKSON CO., MS.

NE CORNER OF SECTION 35, T7S, R7W, JACKSON CO., MS.

SOUTH 26'40"(R)

SOUTH 220.77'(R)

CENTERLINE SOUTH LANE U.S. HWY. NO. 90

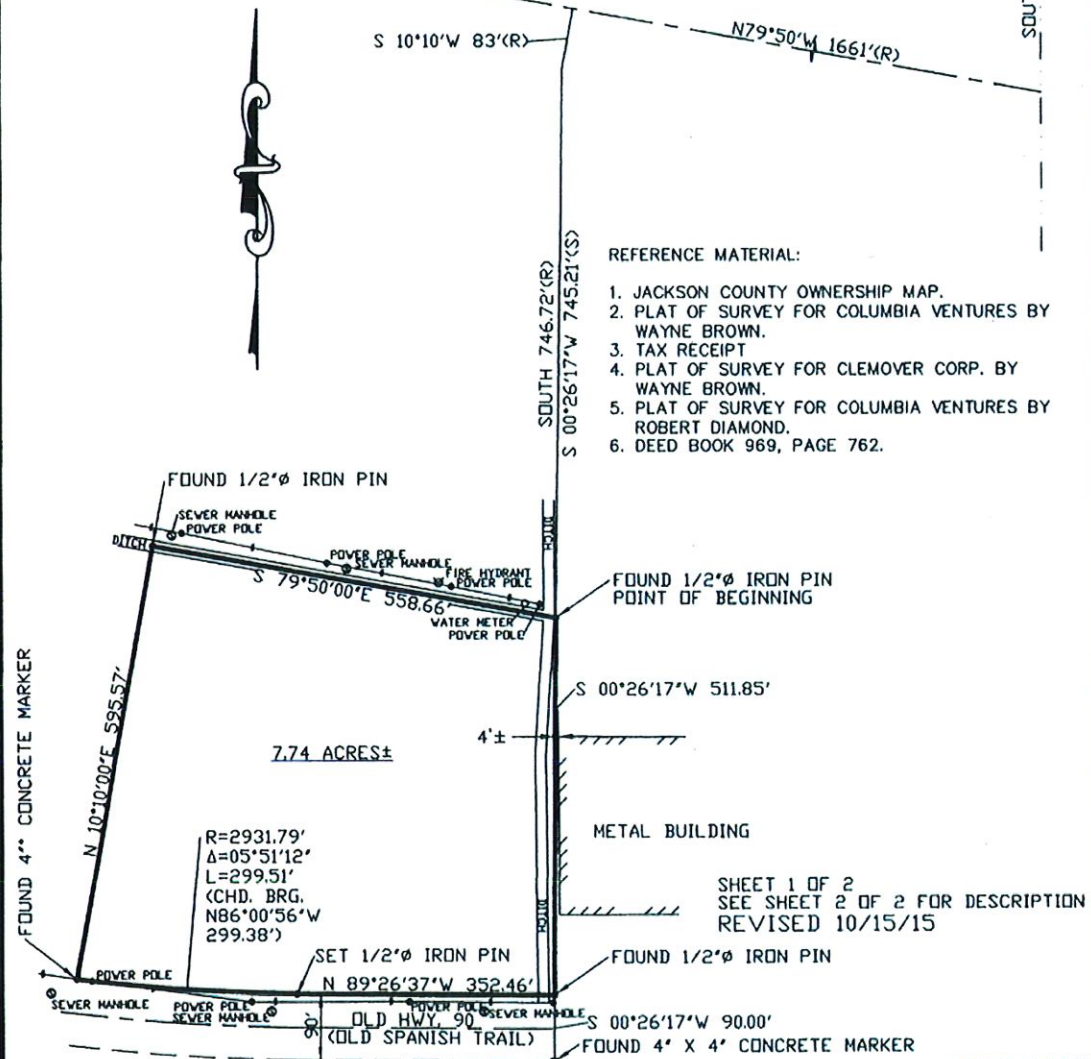
S 10°10'W 83'(R)

N79°50'W 1661'(R)

SOUTH 746.72'(R)
S 00°26'17"W 745.21'(S)

REFERENCE MATERIAL:

1. JACKSON COUNTY OWNERSHIP MAP.
2. PLAT OF SURVEY FOR COLUMBIA VENTURES BY WAYNE BROWN.
3. TAX RECEIPT
4. PLAT OF SURVEY FOR CLEMOVER CORP. BY WAYNE BROWN.
5. PLAT OF SURVEY FOR COLUMBIA VENTURES BY ROBERT DIAMOND.
6. DEED BOOK 969, PAGE 762.



SHEET 1 OF 2
SEE SHEET 2 OF 2 FOR DESCRIPTION
REVISED 10/15/15

367-03-00 / STILLNER

MOODY AND ASSOCIATES, INC.
REGISTERED PROFESSIONAL SURVEYORS
ALABAMA, LOUISIANA, MISSISSIPPI

281 RATLIFF STREET
LUCEDALE, MS. 39452
601-947-4499

PLAT OF SURVEY OF A PARCEL OF LAND
SITUATED IN: SECTION 35, T7S, R7W,
JACKSON COUNTY, MISSISSIPPI

DATE
06/10/03

SCALE
1" = 200'

CLASS
'B'

GERALD MOODY, PLS

10/16/15
[Signature]

**LIFE CHURCH OF GAUTIER
DESCRIPTION
SHEET 2 OF 2**

A PARCEL OF LAND SITUATED IN THE NW ¼ OF SE ¼, SECTION 35, TOWNSHIP 7 SOUTH, RANGE 7 WEST, JACKSON COUNTY, MISSISSIPPI, BEING MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT A CONCRETE MONUMENT WHICH IS COMMONLY ACCEPTED AS LYING 2640 FEET SOUTH (AND ALONG THE SECTION LINE) OF THE NE CORNER OF SECTION 35 SAID TOWNSHIP AND RANGE; THENCE RUN SOUTH 220.77 FEET TO THE CENTER OF THE SOUTH LANE OF U.S. HIGHWAY 90; THENCE RUN NORTH 79 DEGREES 50 MINUTES WEST ALONG SAID LANE FOR 1661 FEET TO A POINT; THENCE RUN SOUTH 10 DEGREES 10 MINUTES WEST 83 FEET AND TO THE SOUTH RIGHT-OF-WAY LINE OF SAID HIGHWAY; THENCE RUN SOUTH 00 DEGREES 26 MINUTES 17 SECONDS WEST 745.21 FEET TO A FOUND ½" DIAMETER IRON PIN AT THE S.E. CORNER OF A PARCEL OF LAND RECORDED IN DEED BOOK 969, PAGES 762 & 763 OF THE LAND DEED RECORDS OF JACKSON COUNTY, MS., AND BEING THE POINT OF BEGINNING; THENCE RUN SOUTH 00 DEGREES 26 MINUTES 17 SECONDS WEST 511.85 FEET TO A SET ½" DIAMETER IRON PIN ON THE NORTH RIGHT-OF-WAY OF OLD SPANISH TRAIL; THENCE RUN ALONG SAID NORTH RIGHT-OF-WAY NORTH 89 DEGREES 26 MINUTES 37 SECONDS WEST 352.46 FEET, SAID POINT BEING ON A CURVE; THENCE RUN IN A NORTHWESTERLY DIRECTION ALONG SAID NORTH RIGHT-OF-WAY AND SAID CURVE HAVING A RADIUS OF 2,931.79 FEET, A CENTRAL ANGLE OF 05 DEGREES 51 MINUTES 12 SECONDS, FOR AN ARC LENGTH OF 299.51 FEET (CHD. BRG. NORTH 86 DEGREES 00 MINUTES 56 SECONDS WEST 299.38 FEET) TO A FOUND 4" DIAMETER CONCRETE MARKER; THENCE RUN NORTH 10 DEGREES 10 MINUTES 00 SECONDS EAST 595.57 FEET TO A SET ½" DIAMETER IRON PIN ON THE SOUTH LINE OF THE AFOREMENTIONED PROPERTY; THENCE RUN SOUTH 79 DEGREES 50 MINUTES 00 SECONDS EAST 558.66 FEET ALONG SAID SOUTH LINE BACK TO THE POINT OF BEGINNING.

CONTAINING 7.74 ACRES MORE OR LESS.

SUBJECT TO ANY EXISTING EASEMENTS AND/OR RIGHTS-OF-WAYS.



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, MOBILE DISTRICT
P.O. BOX 2288
MOBILE, AL 36628-0001

December 5, 2024

South Mississippi Branch
Regulatory Division

SUBJECT: Department of the Army File Number SAM-2022-00726-DCH, Air Masters Mechanical, Inc. Old Spanish Trail Site, Jackson County, Mississippi

Air Masters Mechanical, Inc
Attention: Walter Yarborough
1633 Highway 90
Gautier, MS 39553

Transmitted electronically to wyarboro@bellsouth.net

Dear Mr. Yarborough:

This is in response to your request for a Department of the Army (DA) Approved Jurisdictional Determination (AJD) on a 7.74-acre parcel in Gautier, Jackson County, Mississippi. More specifically, the site is located in Section 35, T 7 S, R 7 W, adjacent to Old Spanish Trail and is centered at Latitude 30.389179, Longitude -88.655321 as depicted on the attached figure.

Based on our review of the information and wetland determination data furnished by your agent, other desktop information available, and site visits in September and December 2023, we have completed an AJD for the site. Attached is an AJD Memorandum for Record (MFR) that describes the features identified on the site are not subject to the jurisdiction of the U.S. Army Corps of Engineers (USACE). Please be advised that this determination reflects current policy and regulation.

The feature identified as W-1, as depicted on the attached exhibit entitled "WETLAND DELINEATION MAP", is not a water of the United States and therefore is not subject to DA jurisdiction. The attached AJD MFR further describes this area. Please be advised that this AJD MFR is based on current policy and regulation and is valid for a period of five (5) years from the date of this letter. If after the 5-year period this jurisdictional determination has not been specifically revalidated by the USACE, it shall automatically expire. If the information you have submitted, and on which the USACE has based its determination is later found to be in error, this decision may be revoked.

Your delineation site was reviewed pursuant to Section 404 of the Clean Water Act. Section 404 of the Clean Water Act requires that a DA permit be obtained for the placement or discharge of dredged and/or fill material into waters of the U.S., including streams and wetlands, prior to conducting the work (33 U.S.C. 1344). For regulatory

purposes, the USACE defines wetlands as those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Please be advised that land clearing operations involving removal of vegetation with mechanized equipment such as front-end loaders, backhoes, or bulldozers with shear blades, rakes, or discs; windrowing vegetation; land leveling; or other soil disturbance in areas subject to USACE jurisdiction are considered a discharge of dredged and/or fill material under our permitting jurisdiction. If future work proposed at this site includes a discharge or placement of dredged and/or fill material into waters of the U.S., a DA permit is required prior to initiating work.

This letter contains an AJD MFR for the requested subject area. If you object to this determination, you may request an administrative appeal under USACE regulations at 33 CFR Part 331. Attached you will find a Notification of Administrative Appeal (NAP) Options and Process and Request for Appeal (RFA) form. If you request to appeal this determination, you must submit a completed RFA to the USACE, South Atlantic Division Office at the following mailing address and e-mail address: Krista Sabin, Regulatory Review Officer, 60 Forsyth Street Southwest, Floor M9, Atlanta, Georgia 30303; Krista.D.Sabin@usace.army.mil.

In order for an RFA to be accepted, the USACE must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within **60 days** of the date of the NAP. It is not necessary to submit an RFA form to the Division Office if you do not object to the determination in this letter.

The statements contained herein do not convey any property rights, or any exclusive privileges and do not authorize any injury to property, nor shall it be construed as excusing you from compliance with other Federal, State, or local statutes, ordinances, or regulations that may affect proposed work at this site.

The delineation included herein has been conducted to identify the location and extent of the aquatic resources for purposes of the Clean Water Act for the particular site identified in this request. This delineation may not be valid for the Wetland Conservation Provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should discuss the applicability of an NRCS Certified Wetland Determination with the local USDA service center, prior to starting work.

If you intend to sell property that is part of a project that requires DA authorization, it may be subject to the Interstate Land Sales Full Disclosure Act. The Property Report, required by Housing and Urban Development Regulation, must state whether or not a permit for the development has been applied for, issued, or denied by the USACE (Part 320.3(h) of Title 33 of the Code of Federal Regulations).

We appreciate your cooperation with the Corps of Engineers' Regulatory Program. Please refer to file number **SAM-2022-00726-DCH** in all future correspondence regarding this project or if you have any questions concerning this determination.

Please contact Greg Christodoulou by telephone at 251-387-1066 or by e-mail at Gregory.s.christodoulou@usace.army.mil should you have any questions. For additional information about our Regulatory Program, visit our web site at <http://www.sam.usace.army.mil/Missions/Regulatory.aspx>. Please take a moment to complete our customer satisfaction survey located under the menu header on the right side of the webpage. Your responses are appreciated and will allow us to improve our services.

Sincerely,

Munther Sahawneh
Team Leader
South Mississippi Branch
Regulatory Division

Attachments



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, MOBILE DISTRICT
P.O. BOX 2288
MOBILE, AL, 36628-0001

South Mississippi Branch
Regulatory Division

5 December 2024

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023),¹ SAM-2022-00726-DCH, Danny Taylor; Old Spanish Trail Property; MFR #1 of #1²

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.³ AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.⁴ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of "waters of the United States" found in the pre-2015

¹ While the Supreme Court's decision in *Sackett* had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

² When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, interstate water, or territorial seas that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

SAM-RD-S-M

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2022-00726-DCH

regulatory regime and consistent with the Supreme Court's decision in *Sackett*. This AJD did not rely on the 2023 "Revised Definition of 'Waters of the United States,'" as amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in Mississippi due to litigation.

1. SUMMARY OF CONCLUSIONS.

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).
 - i. Wetland Area # 1 (W-1), 6.93 acres of wetlands, non-jurisdictional
 - ii. Ditch #1 (D-1), ~ 1068 linear feet, non-jurisdictional
 - iii. Swale #1 (S-1), ~ 900 linear feet, non-jurisdictional

2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).
- c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)
- d. *Sackett v. EPA*, 598 U.S. ___, 143 S. Ct. 1322 (2023)
- e. 2008 Rapanos Guidance

3. REVIEW AREA. The site is located at 1820 Old Spanish Trail; within Section 35, Township 7S, Range 7W; Latitude 30.389179 N and Longitude -88.655321 W; HUC-03170009 – Mississippi Coastal; in Gautier, Jackson County, MS. The review area is 7.74 acres in size and is comprised predominantly of forested wetlands with some recent clearing. The site is bounded by spoil areas created by side cast material from the excavation of ditches on the north and east side of the property approximately 30 years ago; while some material appears to have been side cast from the creation of a swale feature (S-1) along the southern property boundary and

SAM-RD-S-M

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2022-00726-DCH

Old Spanish Trail. The western property boundary consists of a dirt road created from imported fill material > 30 years ago.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Mississippi Sound
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS The flow path from W-1 to a TNW, interstate water, or the territorial seas are via an ephemeral ditch (D-1) and a vegetated swale (S-1). Both of these features connect to an off-site ditch on the south side of Old Spanish Trail which empties approximately 2,600 feet to the east into Bayou Lamotte and then approximately two (2) miles to the Mississippi Sound.
6. SECTION 10 JURISDICTIONAL WATERS⁶: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁷ N/A
7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the pre-2015 regulatory regime. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.
 - a. TNWs (a)(1): N/A

⁶ 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

⁷ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

SAM-RD-S-M

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2022-00726-DCH

- b. Interstate Waters (a)(2): N/A
- c. Other Waters (a)(3): N/A
- d. Impoundments (a)(4): N/A
- e. Tributaries (a)(5): N/A
- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified as “generally non-jurisdictional” in the preamble to the 1986 regulations (referred to as “preamble waters”).⁸ Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water. N/A
- b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance.

S -1 is a vegetated, roadside swale approximately 900 feet in length and located between the subject property and Old Spanish Trail. The swale area was not observed during the September 2023 site visit, but the December 7, 2023, visit showed no standing water in the swale even after greater than five inches of precipitation on December 2nd and December 3rd. Wrack/debris lines were observed along the upper slope of the swale during this visit. S-1 does not exhibit signs of scour or bed and banks or missing or bent vegetation, indicating if it carries water, it is infrequent and low volume. In accordance with the *Rapanos* guidance, swales (small washes characterized by low volume, infrequent, or short duration flow) are generally not jurisdictional.

- c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within

⁸ 51 FR 41217, November 13, 1986.

SAM-RD-S-M

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2022-00726-DCH

the review area and describe how it was determined to be a waste treatment system. N/A

- d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. N/A
- e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in "SWANCC," would have been jurisdictional based solely on the "Migratory Bird Rule." Include the size of the aquatic resource or feature, and how it was determined to be an "isolated water" in accordance with SWANCC. N/A
- f. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court's decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

D-1 is a man-made ditch, a non-RPW tributary, approximately 1068 linear feet in length located along the north and east property boundary. The "North Carolina Division of Water Quality Identification Methods for the Origins of Intermittent and Perennial Streams v. 4.11" was utilized to identify the flow regime of D-1. The score of D-1 was 8.25. According to the worksheet a stream is at least intermittent if the score is ≥ 19 or perennial if ≥ 30 . The resulting score of 8.25 indicates ephemeral or non-relatively permanent flow and is therefore not a jurisdictional tributary.

During the September 2023 site visit, D-1 was dry and contained a large amount of FACW vegetation such as torpedo grass (*Panicum repens*) and alligator weed (*Alternanthera philoxeroides*). During the December 2023 site visit, approximately 12-18 inches of standing water was observed, which was attributed to a total of 5.04 inches of rain that fell on December 2nd and 3rd respectively. A large amount of floating leaf litter and lack of flow was also noted during the December 7th site visit. D-1 was excavated prior to 1992 (Google Earth imagery). D-1 is connected at the southeast corner of the property to a roadside ditch on the south side of Old Spanish Trail by an approximately 50 linear-foot, 36" diameter culvert. It should be noted that this roadside ditch exhibits similar flow characteristics (ephemeral) to D-1. The roadside ditch

SAM-RD-S-M

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2022-00726-DCH

extends approximately 2,600 feet to the east and connects to the nearest RPW which is Bayou Lamotte. Bayou Lamotte is approximately 2 miles from the Mississippi Sound (TNW). D-1 was evaluated under (a)(5) rather than a non-jurisdictional ditch under the Rapanos Guidance because it potentially drains a wetland and therefore does not meet the three-part test of created in uplands, draining only uplands, with less than a relatively permanent flow of water.

W-1 is non-tidal, palustrine forested wetland that lacks a continuous surface connection to an RPW, TNW, territorial seas, interstate water or impoundment of a jurisdictional water. Side-cast material from excavation of the ditch (D-1) and vegetated swale (S-1) is present between those features and the wetland. Possible conveyance features from the wetland to the ditch and swale were observed including: an excavated trench measuring approximately 24" in width and 12" in depth, and approximately 50 feet in length from the wetland to the northern portion of D-1; a 12" diameter pipe, approximately 20 feet in length, with the outfall to D-1 (eastern boundary); and sheet flow from W-1 to S-1. W-1 is separated on the western property boundary by a filled dirt roadway that appears to have been in place prior to 1992. This roadway has also been supplemented with additional fill material at various times since it was initially created based on historical aerial imagery.

A site visit on December 7, 2023, was scheduled to check data points from the submitted wetland delineation and take data points at locations of possible conveyance. Sampling Point 1 (SP-1) was taken immediately adjacent to the origin of the excavated trench in the northern portion of the property. The sample taken at SP-1 and within the excavated trench had a matrix color of chroma 3, so the hydric soil parameter was not met. Similarly, the hydric soil parameter was not met at SP-2 located adjacent to the vegetated swale (S-1). The pipe which was recently installed at the eastern property boundary appears to function more of an overflow mechanism, as it sits several inches above the existing land grade. Discharge from this feature into D-1, only occurs following large rainfall events. Based on the field observations as described above, W-1 lacks a continuous surface connection to an RPW, TNW, territorial seas, interstate water or impoundment of a jurisdictional water and is therefore not a jurisdictional wetland.

Guidance from previously reviewed draft jurisdictional determinations through joint memoranda, specifically, NWK-2024-00392 and NWK-2022-00809_508c (cited in Section 10 below), have indicated that W-1 shows similarities to wetland areas previously found non-jurisdictional due to consideration of flow, number, types, and length of connection between the subject wetland and the requisite covered water. In conclusion, W-1 is not physically close enough to meet the

SAM-RD-S-M

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAM-2022-00726-DCH

continuous surface connection requirement to the downstream relative permanent water and consistent with *Sackett*, is not "adjacent".

9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. Site Visits: September 21, 2023, and December 7, 2023
 - b. Office evaluation: December 6, 2023, and March 18-22, 2024
 - c. NOAA Online Weather Data-National Weather Service
 - d. Munsell Soil Color Book (2009 Year Revised)
 - e. Field Indicators of Hydric Soils in the United States: A Guide for Identifying and Delineating Hydric Soils Version 8.2, 2018
 - f. NHD mapper from USACE NRV
 - g. NC Division of Water Quality. 2010. Methodology for Identification of Intermittent and Perennial Streams and their Origins, Version 4.11. North Carolina Department of Natural Resources, Division of Water Quality. Raleigh, NC.
 - h. Google Earth Pro
 - i. Wetland delineation performed by Ecological Asset Management, LLC dated January 19, 2023.
10. OTHER SUPPORTING INFORMATION.
 - a. Joint Memorandum on NWK-2024-00392
 - b. Joint Memorandum on NWK-2022-00809
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND
REQUEST FOR APPEAL**

Applicant: Air Masters Mechanical, Inc.	File Number: SAM-2022-00726-DCH	Date: 12/05/2024
Attached is:		See Section below
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
<input type="checkbox"/>	PERMIT DENIAL WITHOUT PREJUDICE	C
<input type="checkbox"/>	PERMIT DENIAL WITH PREJUDICE	D
<input checked="" type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	E
<input type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION	F

SECTION I

The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/appeals/> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C. PERMIT DENIAL WITHOUT PREJUDICE: Not appealable

You received a permit denial without prejudice because a required Federal, state, and/or local authorization and/or certification has been denied for activities which also require a Department of the Army permit before final action has been taken on the Army permit application. The permit denial without prejudice is not appealable. There is no prejudice to the right of the applicant to reinstate processing of the Army permit application if subsequent approval is received from the appropriate Federal, state, and/or local agency on a previously denied authorization and/or certification.

D: PERMIT DENIAL WITH PREJUDICE: You may appeal the permit denial

You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information for reconsideration

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.
- **RECONSIDERATION:** You may request that the district engineer reconsider the approved JD by submitting new information or data to the district engineer within 60 days of the date of this notice. The district will determine whether the information submitted qualifies as new information or data that justifies reconsideration of the approved JD. A reconsideration request does not initiate the appeal process. You may submit a request for appeal to the division engineer to preserve your appeal rights while the district is determining whether the submitted information qualifies for a reconsideration.

F: PRELIMINARY JURISDICTIONAL DETERMINATION: Not appealable

You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also, you may provide new information for further consideration by the Corps to reevaluate the JD.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision you may contact:

Greg Christodoulou
CESAM-RD-M
USACE BILOXI FIELD OFFICE
1141 BAYVIEW AVENUE, SUITE 104
BILOXI, MISSISSIPPI 39530
Gregory.s.christodoulou@usace.army.mil
251-387-1066

If you have questions regarding the appeal process, or to submit your request for appeal, you may contact:

Krista Sabin
Regulatory Review Officer, Acting
South Atlantic Division
60 Forsyth St SW, Floor M9
Atlanta, Georgia 30303-8803
Krista.D.Sabin@usace.army.mil
904-314-9631

SECTION II – REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. Use additional pages as necessary. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation and will have the opportunity to participate in all site investigations.

<hr/> Signature of appellant or agent.	Date:
Email address of appellant and/or agent:	Telephone number:



<p>Base Map: ESRI USA Topo Maps Source: USGS, NGS, i-cubed Map Date: January 19, 2023</p> <p>NORTH</p> <p>0 0.4 0.8 1.2 1.6 Miles</p>	<p>PROJECT LOCATION MAP</p>  <p>ECOLOGICAL ASSET MANAGEMENT, LLC</p>	<p>Wetland Delineation for +/- 7.74 ac Parcel along Old Spanish Trail</p> <p>Location: Gautier, MS Portion of Section 35; Township 7-South, Range 7-West County: Jackson County, MS</p>
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Figure 2: Wetland Delineation Map of the +/- 7.74-acre Old Spanish Trail project area; Gautier, Jackson County, MS.

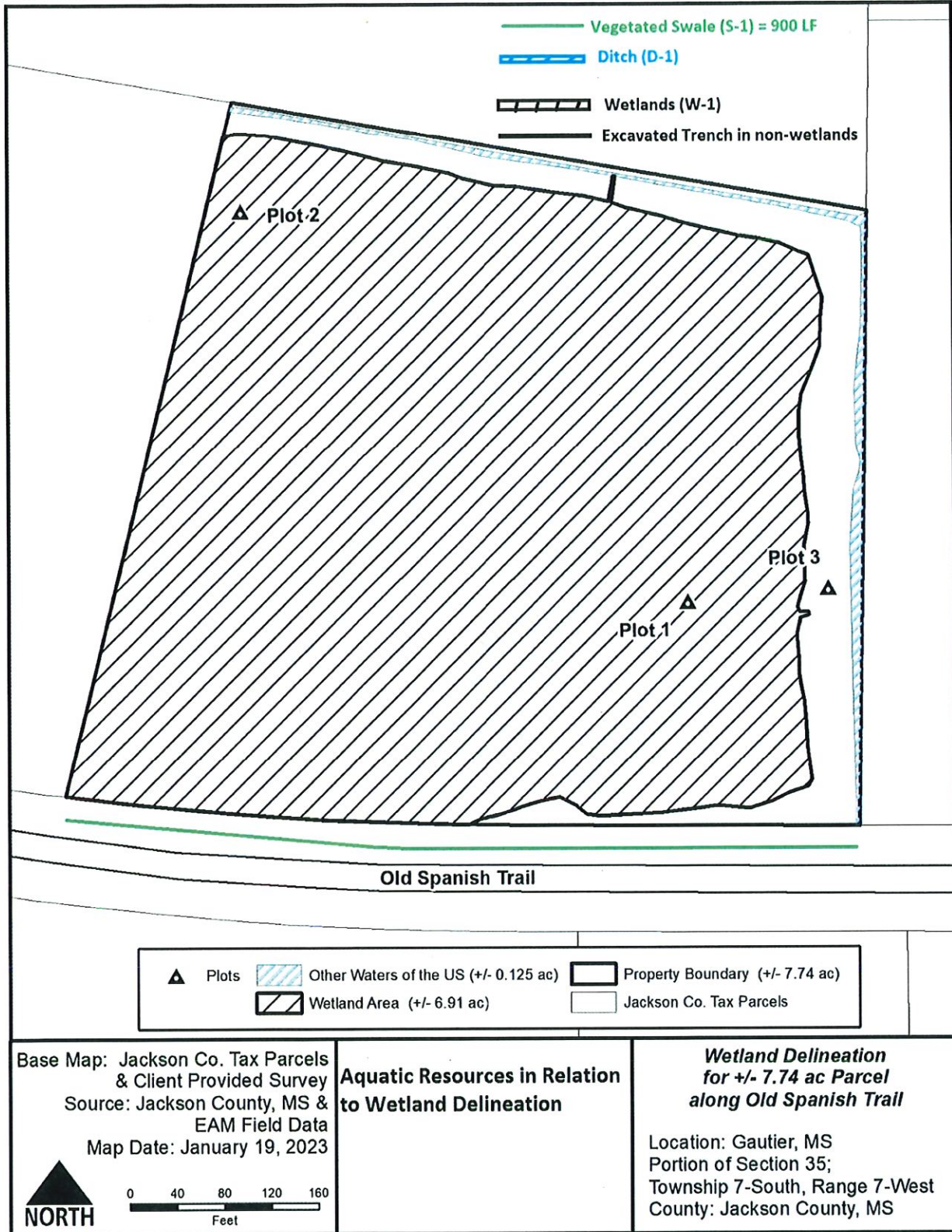


Figure 1: Project Location of the +/- 7.74-acre Old Spanish Trail project area; Gautier, Jackson County, MS.

82435240.001 AIR MASTERS MECHANICAL INC INC

PIDN: 82435240.001

GISP: 777.35-04-0017.00

Owner Information

Percent of Ownership: 100

Name: AIR MASTERS MECHANICAL INC INC

Name 2:

Mailing Address: 1820 OLD SPANISH TRAIL
GAUTIER MS
39553

Site Address: OLD SPANISH TRL GAUTIER

Land Information

Section: 35

Acreage: 7.74

Township: 7

Range: 7

Street Name OLD SPANISH
TRL

Value and Tax Information

Total Assessed Value: 25

Total Appraised Value: 160

Improvement Value: 0

Land Value: 160

Tax Amount: 4

SQ FT: 0

Year Built: 0

Legal Description

Description: COM NEC SEC 35 S 2640' S 220.77'
TO CENTER OF S/LANE HWY 90 N 79
DEG W 1661' S 10 DEG W 83' TO S
/ROW CONT S 745.21' TO POB S 511
.85' TO N/M OLD HWY 90 WLY 651.9
7' N 10 DEG E 595.57' S 79 DEG E
558.66' TO POB DB 1703-327 (17
Map777.35-04)

Deed Book / Page: 1703 / 327

82435240.001 AIR MASTERS MECHANICAL INC INC

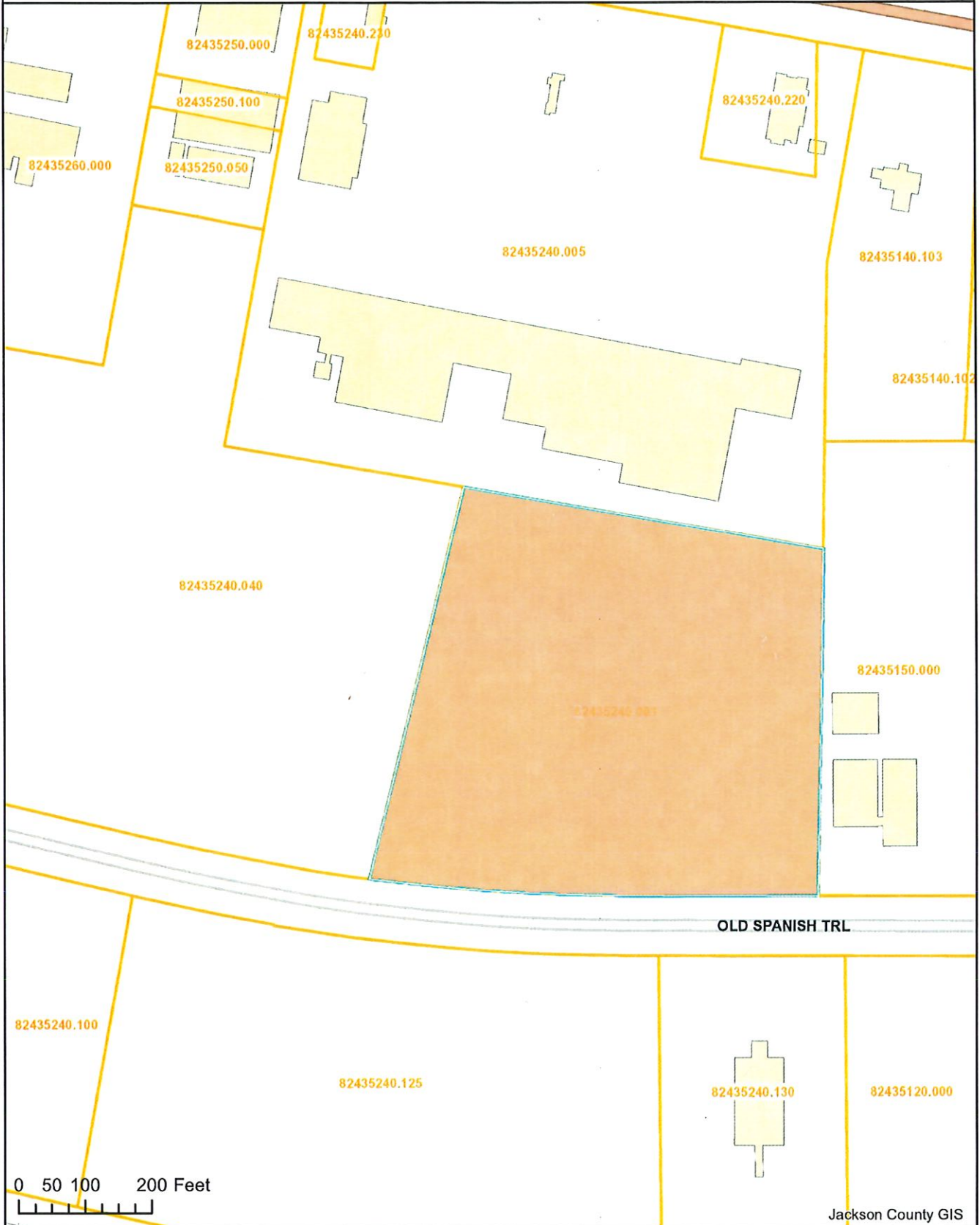


Exhibit A Location Map

Prepared by:
City of Gautier
Planning Department

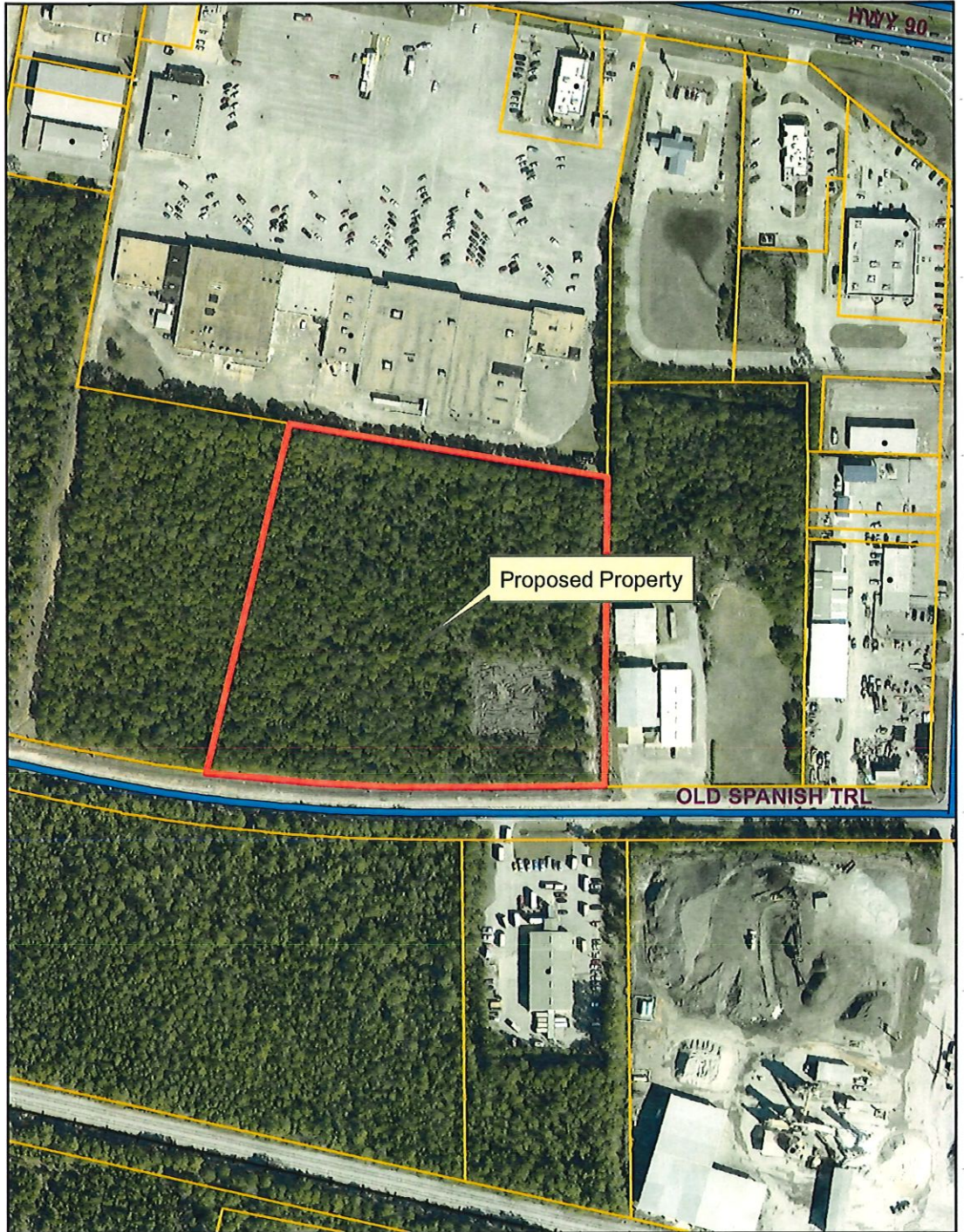


Exhibit B Existing Zoning

Prepared by:
City of Gautier
Planning Department

Legend

Zoning

ZONECODE

- AG
- C-1
- C-2
- C-3
- I-2
- MURC-1
- MURC-2
- MURC-MW
- PL
- PUD
- R-1
- R-2
- R-3
- RE
- TC

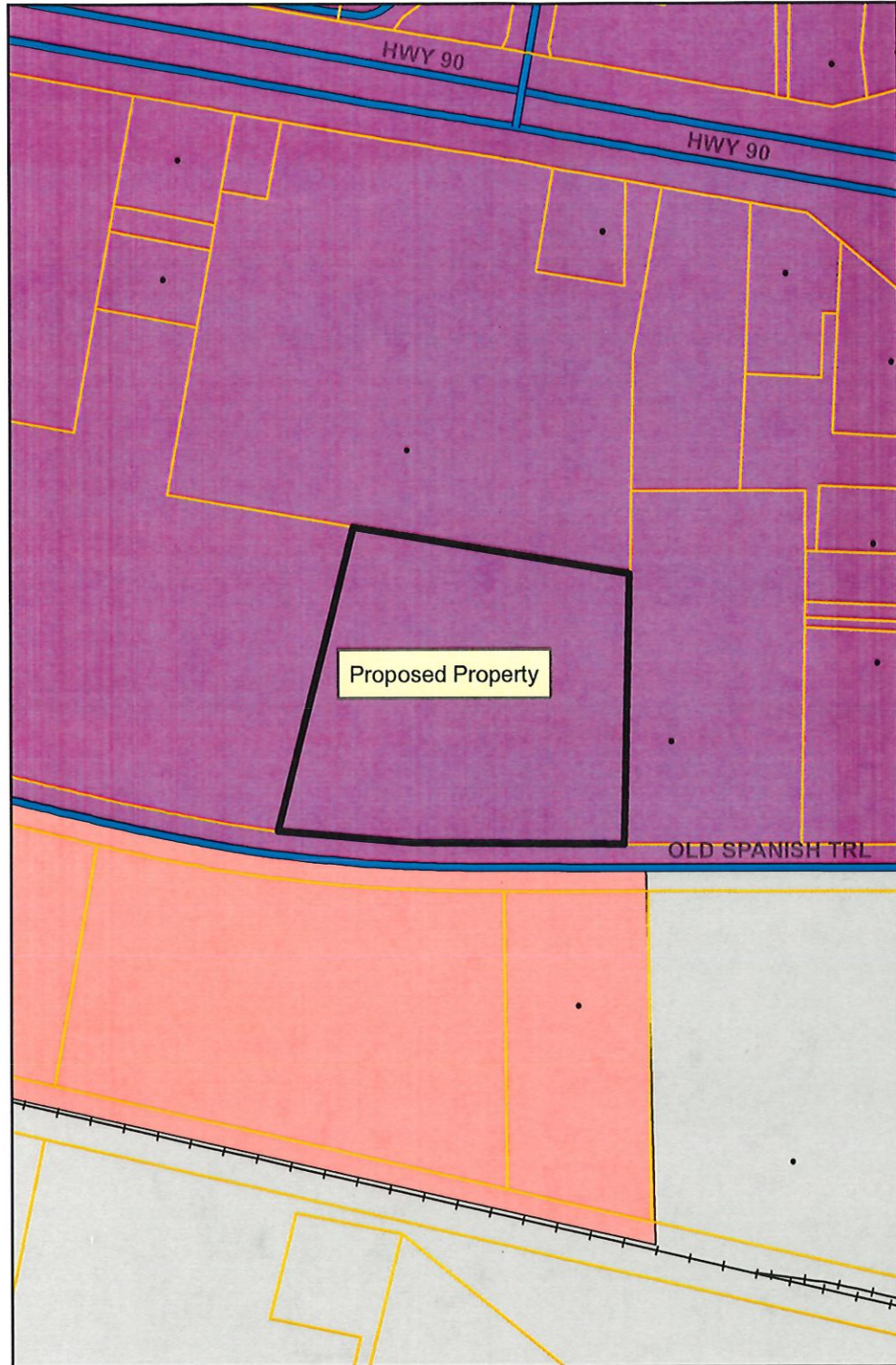


Exhibit C Existing Land-Use

Prepared by:
City of Gautier
Planning Department

Legend

EXISTING LAND USE

ELU_08

- commercial-retail
- conservation
- civic
- industrial
- marina/fish camps
- high density residential
- mobile home
- mobile home park
- medium density residential
- office
- recreation
- very low to low density residential
- utility
- vacant

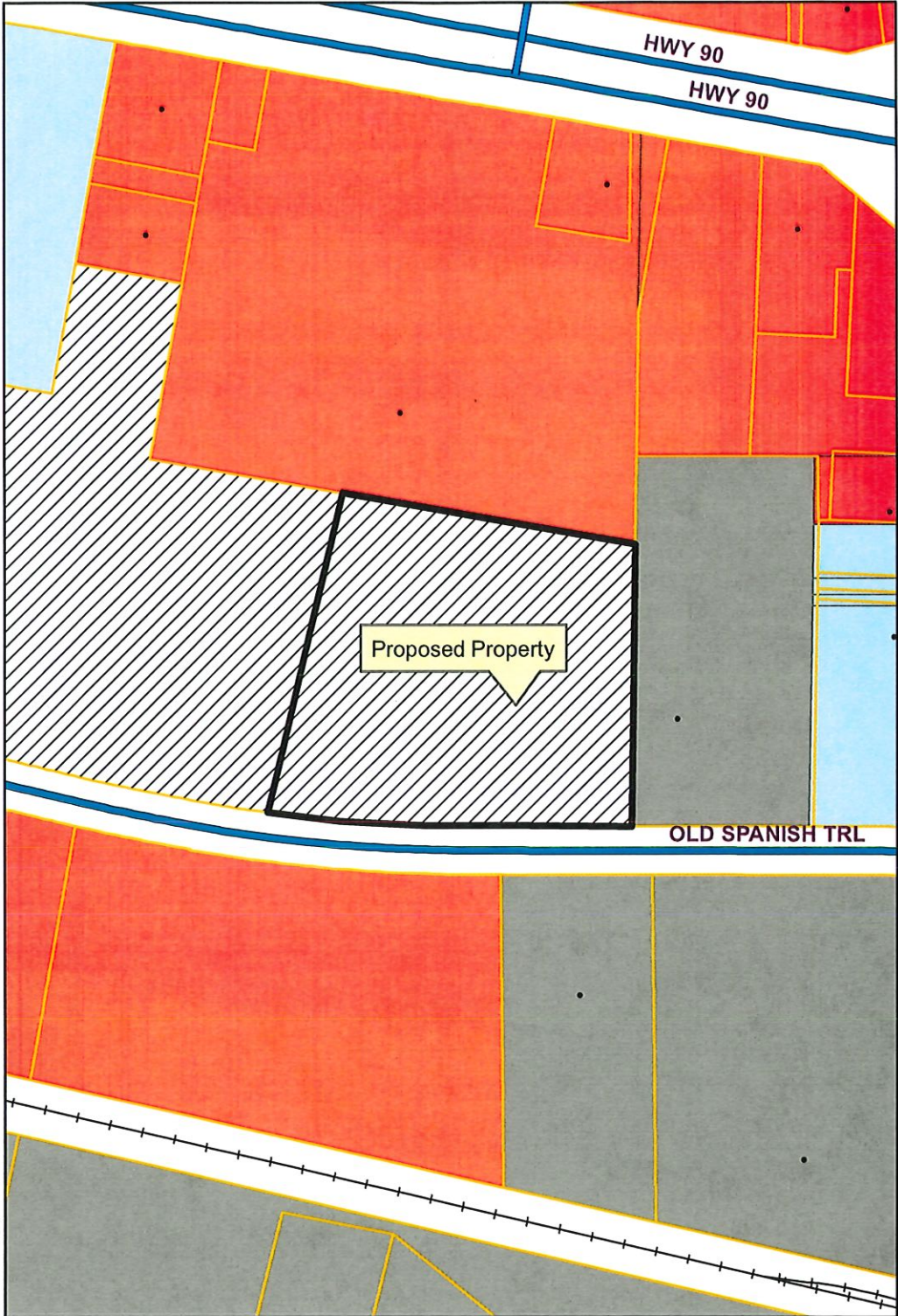

















Exhibit D Future Land-Use

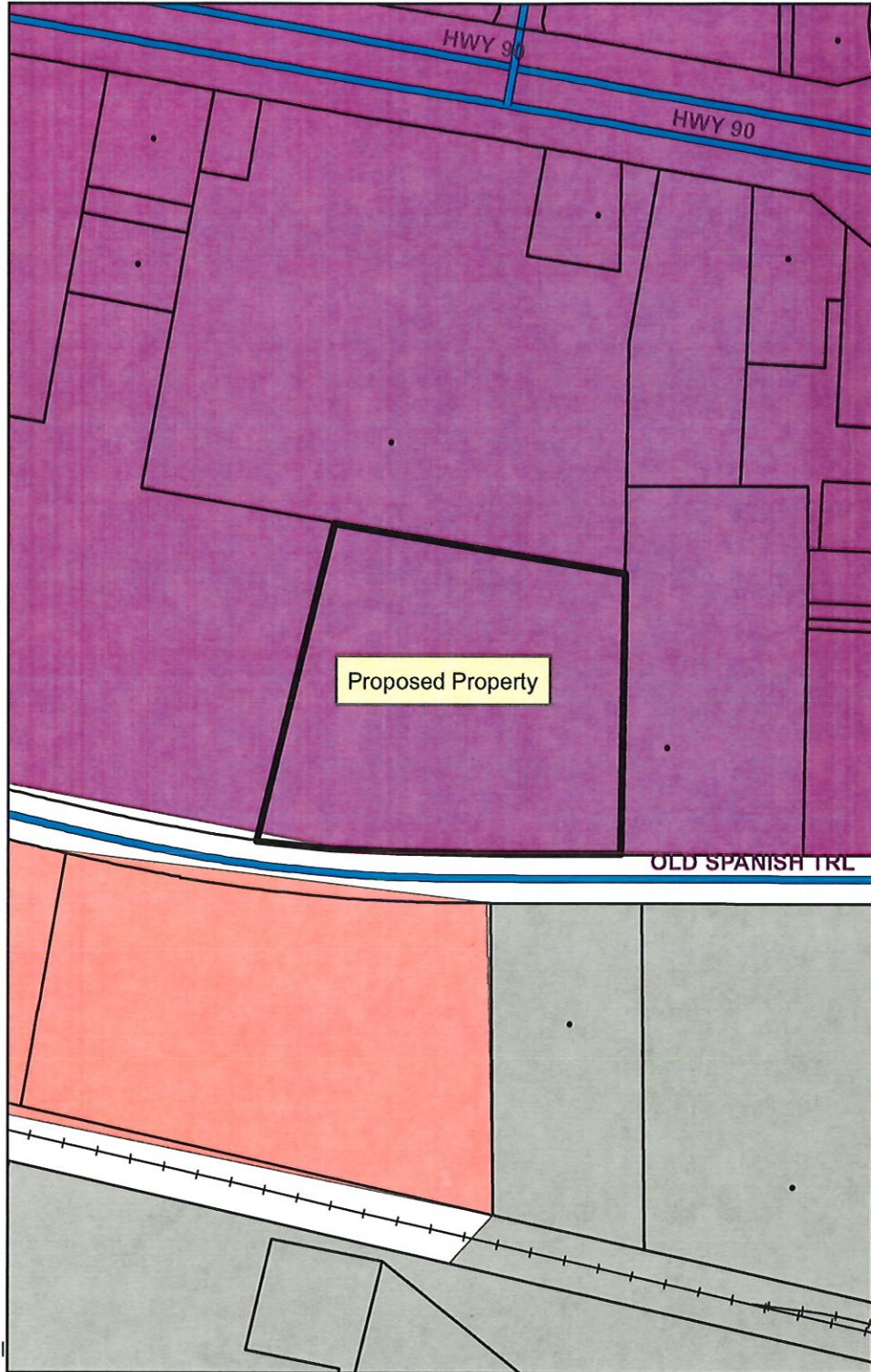
Prepared By:
City of Gautier
Planning Department

Legend

FUTURE LAND USE

FLU_Class

-  Civic
-  high impact commercial
-  Conservation
-  High Density Residential
-  Industrial
-  Low Density Residential
-  Medium Density Residential
-  Mobile Home Residential
-  low impact Commercial
-  Recreational
-  recreational commercial
-  Regional Scale Commercial
-  mixed use residential
-  Town Center
-  Very Low Density Residential



Gautier Planning Commission

Regular Meeting Agenda

May 1, 2025

GPC #25-18-SE

Noelia Jimenez & Imer Perez

dba

J & G Real Estate Investment, LLP

3517 Raintree Drive

VII. NEW BUSINESS

3. Consider a request for a **SPECIAL EXCEPTION** that would allow a duplex in a R-1 Low Density Single-Family Residential Zoning District. 3517 Raintree Drive, PID #82434083.000. (GPC #25-18-SE)

CITY OF GAUTIER STAFF REPORT

To: Chairman and Members, Planning Commission
From: Scott Ankerson, Planning Director
Date: April 24, 2025
Subject: Consider a request for a Special Exception that would allow a duplex in a R-1 Low Density Single-Family Residential Zoning District. 3517 Raintree Drive, PID #82434083.000. (GPC #25-18-SE)

REQUEST:

The Planning Department has received a request from Noelia Jimenez & Imer Perez dba J & G Real Estate Investment, LLP, for a Special Exception that would allow a duplex in a R-1 Low Density Single-Family Residential Zoning District at 3517 Raintree Drive, PID #82434083.000. (GPC #25-18-SE). The application fee of \$250 was paid on March 24, 2025. All public notice requirements have been met.

BACKGROUND:

The request property is zoned R-1 Low Density Single-Family Residential.

1. Location: 3517 Raintree Drive, PID #82434083.000 (See Exhibit A)
2. General features of the proposed project:
 - Lot Size: approximately 0.3 acres
 - Pre-existing duplex – no power in either unit since September 2021
3. Potable Water and Wastewater Services: Available at current location
4. Current Zoning (See Exhibit B): R-1 Low Density Single-Family Residential
5. Current Surrounding Zoning (See Exhibit B): R-1 Low Density Single-Family to west, south, and east; AG Agricultural to the north.
6. Current Surrounding Existing Land Use (See Exhibit C): Vacant to the north and south, Very low to low density residential to the east and west.
7. Comprehensive Plan Future Land Use Designation (See Exhibit D): Medium Density Residential

DISCUSSION:

The following addresses the review criteria for a Special Exception outlined in Section 4.16.4 of the UDO.

1. Explain how a literal interpretation of the City of Gautier's Unified Development Ordinance would deprive the applicant of rights commonly enjoyed by others of the district in which the property is located, and would work unnecessary hardship upon the applicant?

Applicant Response: *It was previously a duplex.*

Staff Finding: *Unsubstantiated*

2. Explain how the requested Special Exception will be in harmony with the purpose of the City of Gautier's Unified Development Ordinance and will not be injurious to the neighborhood or the general welfare?

Applicant Response: *This will not be injurious to the neighborhood or the general welfare.*

Staff Finding: *It is staff's opinion that this will not be injurious to the neighborhood or the general welfare.*

3. Explain how the special circumstances requiring the proposed Special Exception are not results of actions of the applicant.

Applicant Response: *Because it was previously a duplex.*

Staff Finding: *Unsubstantiated*

DETERMINATION OF APPLICABLE LAW:

1. The UDO defines a Special Exception as a relaxation of the terms of the Unified Development Ordinance where such an exception will not be contrary to the public interest, and where, owing to conditions peculiar to the property, a literal enforcement of the ordinance would result in undue hardship. Special Exceptions are necessary when an applicant seeks to establish or expand a use not ordinarily permitted in a specific zoning district. "Special Exceptions" are not transferable from one (1) owner of land to another.
2. Special Exception requires a public hearing before the Planning Commission and approval by the City Council (Section 4.14 of the UDO).

3. Once an application for a Special Exception is submitted to the Planning Department, the procedures outlined in UDO Section 4.14.1 will be followed. At the appropriate time, The Planning Commission will conduct a public hearing to determine whether the applicant meets all relevant criteria, and make a recommendation to City Council pursuant to UDO Section 4.14.4. City Council, pursuant to UDO Section 4.14.4(C), will then consider the matter at its next regularly scheduled meeting and approve or deny the Special Exception.
4. A Special Exception is required for uses not ordinarily permitted in a specific zoning district. Special Exceptions are not permitted by right, and may only be granted when certain criteria are established. (4.16.4)
5. Special Exceptions do not run with the land, and may be revoked by the Planning Department if any of the following circumstances are discovered:
 - A. The property changes ownership
 - B. The property is being utilized in a manner not permitted under the zoning regulations or the special exception; or
 - C. The property ceases to be used for the purpose allowed in the Special Exception for a period of one hundred eighty (180) days during the existence of the Special Exception.

The UDO defines **Hardship** as:

Hardship means the unnecessary hardship that would result from a failure to grant the requested variance or special exception. An unnecessary hardship exists if:

- (1) the land in question cannot yield a reasonable return if used only
 - (a) for a purpose allowed in that zone (applicable to special exceptions), or
 - (b) as permitted by the dimensional requirements of this ordinance (applicable to variances);
- (2) that the plight of the owner is due to unique circumstances of the land for which the variance or special exception is sought; and
- (3) that the use to be authorized by the variance will not alter the essential character of the locality.

RECOMMENDATION & CONCLUSION:

If recommending approval, Planning Commission shall record that the evidence presented meets the "Criteria for Approval" from the UDO as listed above.

The Planning Commission may:

1. Recommend that City Council approve the Special Exception;
2. Recommend that City Council approve the Special Exception with changes; or
3. Recommend that City Council deny the Special Exception.

ATTACHMENTS:

1. Applicant's Exhibit 1 – Application
2. City's Exhibit A – Location Map
3. City's Exhibit B – Existing Zoning Map
4. City's Exhibit C – Existing Land Use Map
5. City's Exhibit D – Future Land Use Map

PLANNING DEPARTMENT
GAUTIER, MISSISSIPPI

SPECIAL EXCEPTION HEARING APPLICATION

Public Hearing Number

25-18-5E

<u>TYPE OF REQUEST:</u>	<u>FEE:</u>
Special Exception _____	\$251.00
*Includes \$1.00 filing fee per MS Code §25-60-5	

Special Exception— These uses are not allowed by right and **require** a recommendation by the Planning Commission and approval of the City Council.

Name of Applicant: Noelia Jimenez and Imer Perez

Name of Business: J & G Real Estate Investment, LLP

Address: ~~17034~~ 3517 Raintree Drive, Gautier, MS 39553

Mailing Address (if different): 17034 Carlton Cuevas Rd. Gulfport 39503

Email Address: generaljanitorialservices@gmail.com

Phone: 228-224-2147 Cell Phone: _____

Reason for request, location and intended use of Property: Duplex R1 zone

ATTACHMENTS REQUIRED AS APPLICABLE:

- 1. Diagram of intended use, showing dimensions and distances of property, building with setbacks, parking spaces, entrances and exits.
- 2. Legal descriptions and street address.
- 3. A detailed project narrative that also addresses the questions on the "Criteria for Approval" page of this application.
- 4. Copy of protective covenants or deed restrictions, if any.
- 5. Copies of approvals, or requests for approval, from other agencies, such as, but not limited to, the Mississippi State Department of Health, U.S. Army Corp of Engineers, Mississippi Department of Environmental Quality and Department of Marine Resources.
- 6. Any other information requested by the Planning Director.
- 7. Owner's Consent form if anyone other than 100% sole owner makes application (see attached).

Signature of Applicant: [Signature]

FOR OFFICE USE ONLY	
Date Received <u>3-24-25</u>	Verify as Complete <u>Bl.</u>
Fee Amount Received <u>251.00</u>	
Initials of Employee Receiving Application <u>Bals</u>	

R-1

SPECIAL EXCEPTION

Criteria for Approval Special Exception

- A. Explain how a literal interpretation of the City of Gautier's Unified Development Ordinance would deprive the applicant of rights commonly enjoyed by others of the district in which the property is located, and would work unnecessary hardship upon the applicant?
- B. Explain how the requested Special Exception will be in harmony with the purpose and intent of the City of Gautier's Unified Development Ordinance and will not be injurious to the neighborhood or the general welfare?
- C. Explain how the special circumstances requiring the proposed Special Exception are not results of actions of the applicant?

A. It was previously a Duplex

B. This will not be injurious to the neighborhood or the general welfare.

C. Because it was previously a Duplex.

Price cut: \$20K (1/6)

\$80,000

3517 Raintree Dr, Gautier, MS 39553

5 beds **2** baths **2,130** sqft

Contact agent

Est.: **\$504/mo** [Get pre-qualified](#)



Residential, Multi Family, Duplex



Built in 1971



-- sqft lot



\$-- Zestimate®



\$38/sqft



\$-- HOA

What's special

INVESTOR SPECIAL! This duplex is being sold "as-is" and is perfect for those looking to invest in real estate. The property has a total of approximately 2,130 square feet. One of the units features 3 bedrooms, 2 bathrooms and is located on the first floor, while the other has 2 bedrooms, one bathroom and is located on the second floor. Don't miss out on this opportunity to own a great investment property! Call today for

[Show more](#)

506 days on Zillow **163 views** **6 saves**

Zillow last checked: 2 hours ago

Listing updated: March 06, 2025 at 08:25am

Listed by: Terri R Jones 601-919-5075, Simply Realty 601-919-5075

Source: MLS United, MLS#: 4063619



INDEXING INSTRUCTIONS: Section 34, T7S, R7W

Prepared By:
Andy J. Alfonso, III
Attorney at Law
2112 Bienville Blvd., Suite H1
Ocean Springs, MS 39564
(228) 818-5552

Return to:
Andy J. Alfonso, III
Attorney at Law
2112 Bienville Blvd., Suite H1
Ocean Springs, MS 39564
(228) 818-5552

STATE OF MISSISSIPPI
COUNTY OF JACKSON

SPECIAL WARRANTY DEED

FOR AND CONSIDERATION of the sum of TEN AND NO/100 DOLLARS (\$10.00), cash in hand paid and other good, legal and valuable considerations, the receipt of all of which is hereby acknowledged, the undersigned

MSTREO, LLC
4747 Executive Dr., Suite 210, San Diego, CA 92121
c/o (228) 818-5552

does hereby sell, convey and specially warrant unto

J&G Real Estate Investment, LLP
17034 Carlton Cuevas Rd, Gulfport, MS 39503
c/o (228) 818-5552

the land and property situated in the County of Jackson, State of Mississippi, described as follows, to-wit:

SEE EXHIBIT "A"

THIS CONVEYANCE is made subject to all applicable building restrictions, restrictive

covenants, easements and mineral reservations of record.

IT IS AGREED and understood that the taxes for the current year have been prorated as of this date on an estimated basis. When said taxes are actually determined, if the proration as of this date is incorrect, the Grantor agrees to pay to the Grantee or his/her assigns any amount which is a deficit on an actual proration and likewise, the Grantee agrees to pay to the Grantor any amount overpaid by the Grantor.

WITNESS THE SIGNATURE of the Grantor, this the 28 day of March, 2025.

MSTREO, LLC

By: Ryan Cole

STATE OF California
COUNTY OF San Diego

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

PERSONALLY appeared before me, the undersigned authority in and for the said County and State, on this 28 day of March, 2025, within my jurisdiction, the within named, Ryan Cole, who acknowledged to me that he is Senior Vice President of Operations of the within named, MSTREO, LLC, and that for and on behalf of the said entity, and as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said entity so to do.

GIVEN under my hand and the official seal of my office.

Neda Amaya
NOTARY PUBLIC

File #250156

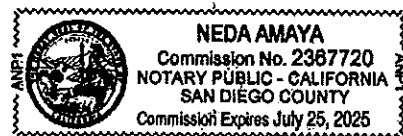


EXHIBIT "A"
LEGAL DESCRIPTION

3517 Raintree Drive Gautier, Mississippi 39553

Parcel #: 82434083.000 PPIN: 65599

Which also has a legal description of:

A tract of land situated in Section 34, Township 7 South, Range 7 West, Jackson County, Mississippi and more particularly described and follows: commencing at the NE corner of Section 34; Thence N 89 degrees 55 minutes West along the North Line of Section 34 935.00 feet to the point of beginning; Thence South 0 degrees 52 minutes West 145.00 feet to the North Margin of Raintree Drive; Thence South 89 degrees 55 minutes East along the North Margin of Raintree Drive 91.00 feet; Thence North 0 degrees 52 minutes East 145.000 feet to the point of beginning.



A. Settlement Statement (HUD-1)

B. Type of Loan							
1. <input type="checkbox"/> FHA		2. <input type="checkbox"/> RHS		3. <input type="checkbox"/> Conv. Unins.		6. File Number	
4. <input type="checkbox"/> VA		5. <input type="checkbox"/> Conv. Ins.		250156		7. Loan Number	
8. Mortgage Insurance Case Number							
C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.*)" were paid outside the closing; they are shown here for information purposes and are not included in the totals.							
D. Name and Address of Borrower J&G Real Estate Investment, LLP 17034 Carlton Cuevas Rd Gulfport, MS 39503				E. Name and Address of Seller MSTREO, LLC 4747 Executive Dr., Suite 210 San Diego, CA 92121		F. Name and Address of Lender	
G. Property Location 3517 Raintree Drive Gautier, MS 39553				H. Settlement Agent ((228) 818-5552) Andy J. Alfonso, III, Attorney at Law 2112 Bienville Blvd, H1, Ocean Springs, MS 39564			
				Place of Settlement 2112 Bienville Blvd Suite H-1 Ocean Springs, MS 39564		I. Settlement Date 03/24/2025	
J. SUMMARY OF BORROWER'S TRANSACTION:				K. SUMMARY OF SELLER'S TRANSACTION:			
100. GROSS AMOUNT DUE FROM BORROWER				400. GROSS AMOUNT DUE TO SELLER			
101. Contract sales price		68,250.00		401. Contract sales price		68,250.00	
102. Personal property				402. Personal property			
103. Settlement charges to borrower (line 1400)		1,072.00		403.			
104.				404.			
105.				405.			
Adjustments for items paid by seller in advance				Adjustments for items paid by seller in advance			
106. City/town taxes		to		406. City/town taxes		to	
107. County taxes		to		407. County taxes		to	
108. Assessments		to		408. Assessments		to	
109.				409.			
110.				410.			
111.				411.			
112.				412.			
120. GROSS AMOUNT DUE FROM BORROWER		69,322.00		420. GROSS AMOUNT DUE TO SELLER		68,250.00	
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER				500. REDUCTIONS IN AMOUNT TO SELLER			
201. Deposit or earnest money		3,412.50		501. Excess Deposit (see instructions)			
202. Principal amount of new loan(s)				502. Settlement charges to seller (line 1400)		4,154.64	
203. Existing loan(s) taken subject to				503. Existing loans taken subject to			
204.				504. Payoff of first mortgage loan			
205.				505. Payoff of second mortgage loan			
206.				506.			
207.				507. Deposit being disbursed as proceeds (3,412.50)			
208.				508.			
209.				509.			
Adjustments for items unpaid by seller				Adjustments for items unpaid by seller			
210. City/town taxes		to		510. City/town taxes		to	
211. County taxes		01/01/2025 to 03/24/2025		511. County taxes		01/01/2025 to 03/24/2025	
212. Assessments		to		512. Assessments		to	
213.				513.			
214.				514. 2024 Taxes 82434083.000		1,547.20	
215.				515. 2023 Taxes 82434083.000		2,698.87	
216.				516. 2022 Taxes 82434083.000		3,196.22	
217.				517.			
218.				518.			
219.				519.			
220. TOTAL PAID BY / FOR BORROWER		3,754.08		520. TOTAL REDUCTION AMOUNT DUE SELLER		11,938.51	
300. CASH AT SETTLEMENT FROM OR TO BORROWER				600. CASH AT SETTLEMENT TO OR FROM SELLER			
301. Gross amount due from borrower (line 120)		69,322.00		601. Gross amount due to seller (line 420)		68,250.00	
302. Less amounts paid by/for borrower (line 220)		3,754.08		602. Less reduction amount due to seller (line 520)		11,938.51	
303. CASH		FROM BORROWER		603. CASH		TO SELLER	
		65,567.92				56,311.49	

SUBSTITUTE FORM 1099 SELLER STATEMENT: The information contained herein is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction will be imposed on you if this item is required to be reported and the IRS determines that it has not been reported. The Contract Sales Price described on Line 401 above constitutes the Gross Proceeds of this transaction.

SELLER INSTRUCTIONS: To determine if you have to report the sale or exchange of your primary residence on your tax return, see the Schedule D (Form 1040) instructions. If the real estate was not your primary residence, complete the applicable parts of Form 4797, Form 6252, and for Schedule D (Form 1040).

TIN#

MSTREO, LLC

L. SETTLEMENT CHARGES:		File Number: 250156		
700. Total Real Estate Broker Fees		4,095.00		
Division of commission (line 700) as follows:				
701. \$	2,047.50	to	Simply Realty	
702. \$	2,047.50	to	Sunset Mississippi Realty, LLC	
703. Commission paid at Settlement				4,095.00
704.				
705.				
800. Items Payable in Connection with Loan			P.O.C.	
801. Our origination charge	\$		(from GFE#1)	
802. Your credit or charge (points) for the specific interest rate chosen	\$		(from GFE#2)	
803. Your adjusted origination charges			(from GFE A)	
804. Appraisal fee			(from GFE#3)	
805. Credit report			(from GFE#3)	
806. Tax service			(from GFE#3)	
807. Flood certification			(from GFE#3)	
808.				
809.				
810.				
811.				
812.				
813.				
814.				
900. Items Required by Lender to Be Paid in Advance				
901. Daily interest charges	from	to	@ \$ /day (from GFE#10)	
902. Mortgage insurance premium	for	to	(from GFE#3)	
903. Homeowner's insurance	for	to	(from GFE#11)	
904. Flood Insurance Premium				
905. Windstorm Insurance Premium				
1000. Reserves Deposited with Lender				
1001. Initial deposit for your escrow account			(from GFE#9)	
1002. Homeowner's insurance	mo. @ \$		per mo. \$	
1003. Mortgage insurance	mo. @ \$		per mo. \$	
1004. City property taxes	mo. @ \$		per mo. \$	
1005. County property taxes	mo. @ \$		per mo. \$	
1006. Annual Assessments	mo. @ \$		per mo. \$	
1007.	mo. @ \$		per mo. \$	
1008.	mo. @ \$		per mo. \$	
1009. Aggregate Adjustment			\$	
1100. Title Charges				
1101. Title services and lender's title insurance			(from GFE#4)	
1102. Settlement or closing fee	Andy J. Alfonso, III, Attorney at Law		(from GFE#4)	380.00
1103. Owner's title insurance	Andy J. Alfonso, III, Attorney at Law/S		(from GFE#5)	376.00
1104. Lender's title insurance				
1105. Lender's title policy limit				
1106. Owner's title policy limit	68,250.00 --	376.00		
1107. Agent's portion of the total title insurance premium	Andy J. Alfonso, III, Attorney at Law	\$	320.80	
1108. Underwriter's portion of the total title insurance premium	Security Title Guarantee Corp. of Baltimore	\$	55.20	
1109. Title Search/Abstract	Andy J. Alfonso, III, Attorney at Law		(from GFE#4)	285.00
1110. Overnight/Wiring	Andy J. Alfonso, III, Attorney at Law		(from GFE#4)	28.64
1111. ICPL Fee	Security Title Guarantee of Baltimore		(from GFE#4)	
1112.				
1113.				
1200. Government Recording and Transfer Charges				
1201. Government recording charges			(from GFE#7)	31.00
1202. Deed \$	62.00	Mortgage \$	Releases \$	31.00
1203. Transfer taxes			(from GFE#8)	
1204. City/county tax/stamps	Deed \$	Mortgage \$		
1205. State tax/stamps	Deed \$	Mortgage \$		
1206.				
1207.				
1208.				
1300. Additional Settlement Charges				
1301. Required services that you can shop for			(from GFE#6)	
1302. Pest Inspection				
1303.				
1304.				
1305.				
1306.				
1307.				
1308.				
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)				1,072.00
				4,154.64

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in the transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

J&G Real Estate Investment, LLP

MSTREO, LLC

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

Andy J. Alfonso, III, Attorney at Law

03/24/25

J&G Real Estate Investment, LLP

MSTREO, LLC



A. Settlement Statement (HUD-1)

B. Type of Loan			
1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> RHS	3. <input type="checkbox"/> Conv. Unins.	6. File Number 250156
4. <input type="checkbox"/> VA	5. <input type="checkbox"/> Conv. Ins.		7. Loan Number
			B. Mortgage Insurance Case Number
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210. City/town taxes	to	510. City/town taxes	to
211. County taxes	01/01/2025 to 03/24/2025 341.58	511. County taxes	01/01/2025 to 03/24/2025 341.58
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215.		515. 2023 Taxes 82434083.000	2,698.87
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T&E

MSTREO, LLC

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1200. Government Recording and Transfer Charges				
1201. Government recording charges				(from GFE#7) 31.00
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1301. Required services that you can shop for				(from GFE#6)
1302. Pest Inspection				
1303.				
1304.				
1305.				
1306.				
1307.				
1308.				
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)				1,072.00 4,154.64

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J&G Real Estate Investment, LLP

MSTREO, LLC

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

Andy J. Alfonso, III, Attorney at Law

03/24/25

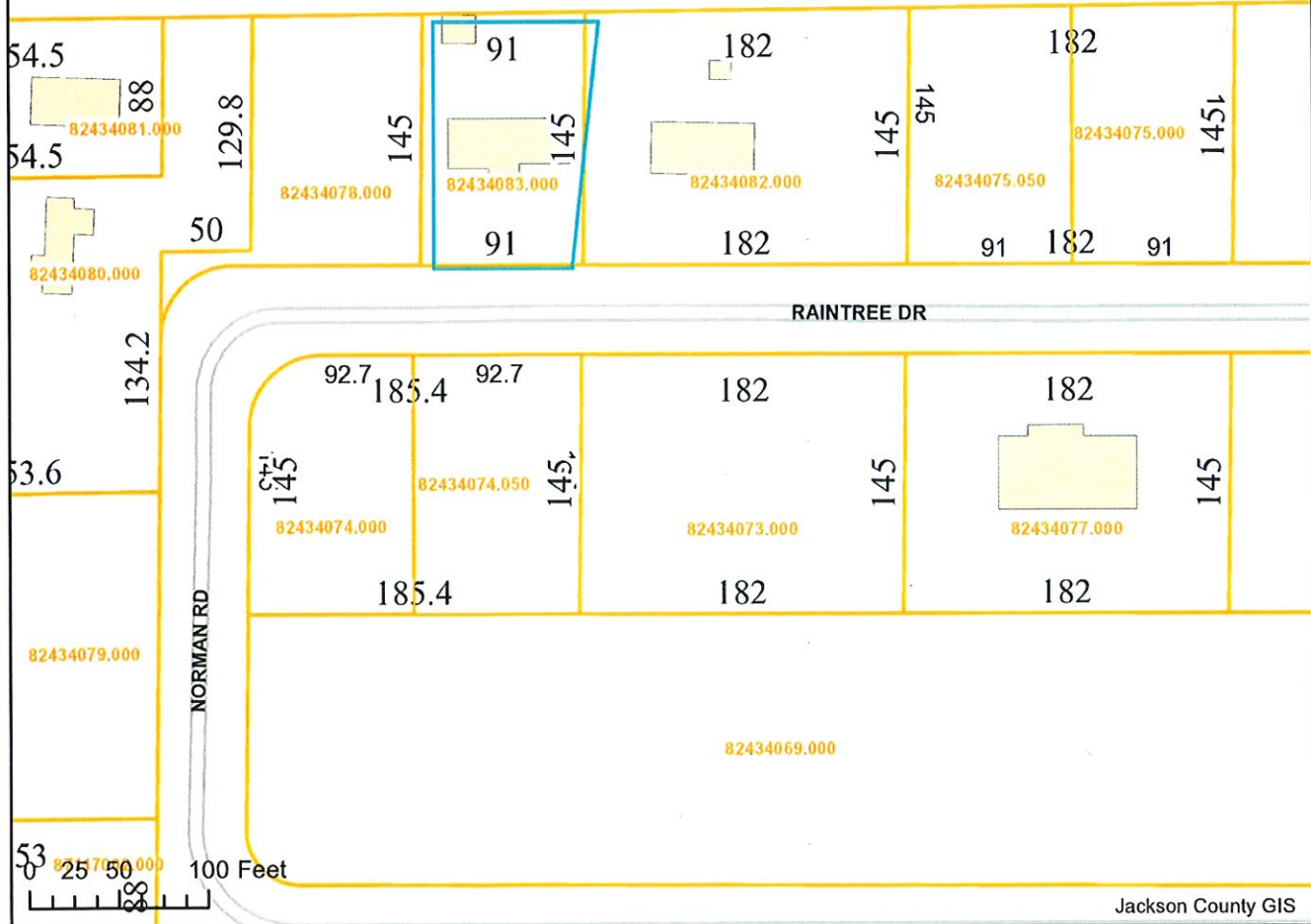
3/24/2025

J&G Real Estate Investment, LLP

MSTREO, LLC

82434083.000 TTLBL LLC

82427006.000



Jackson County GIS

Exhibit A Location Map

Prepared by:
City of Gautier
Planning Department

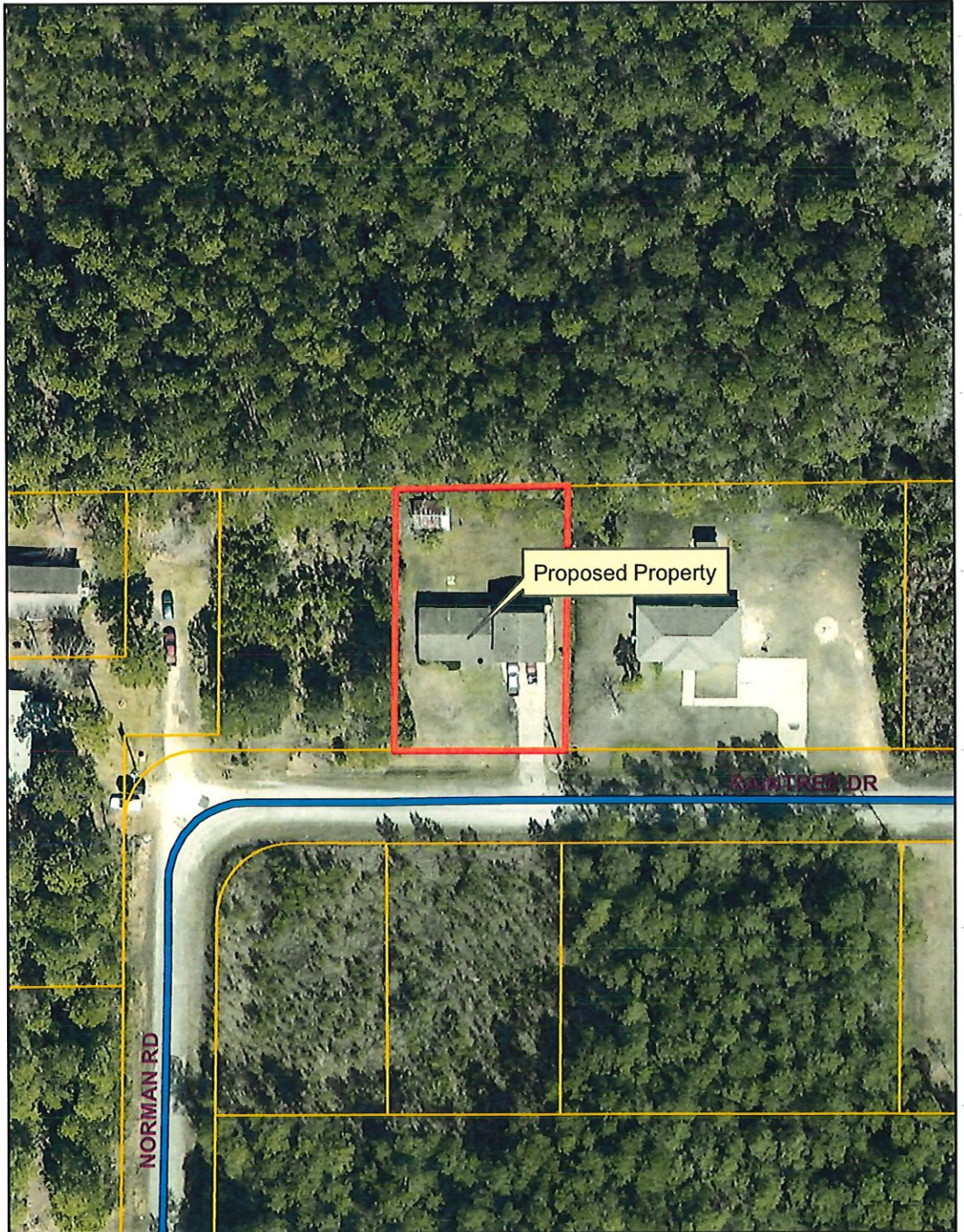


Exhibit B Existing Zoning
















Prepared by:

City of Gautier
Planning Department

Legend

Zoning

ZONECODE

	AG
	C-1
	C-2
	C-3
	I-2
	MURC-1
	MURC-2
	MURC-MW
	PL
	PUD
	R-1
	R-2
	R-3
	RE
	TC

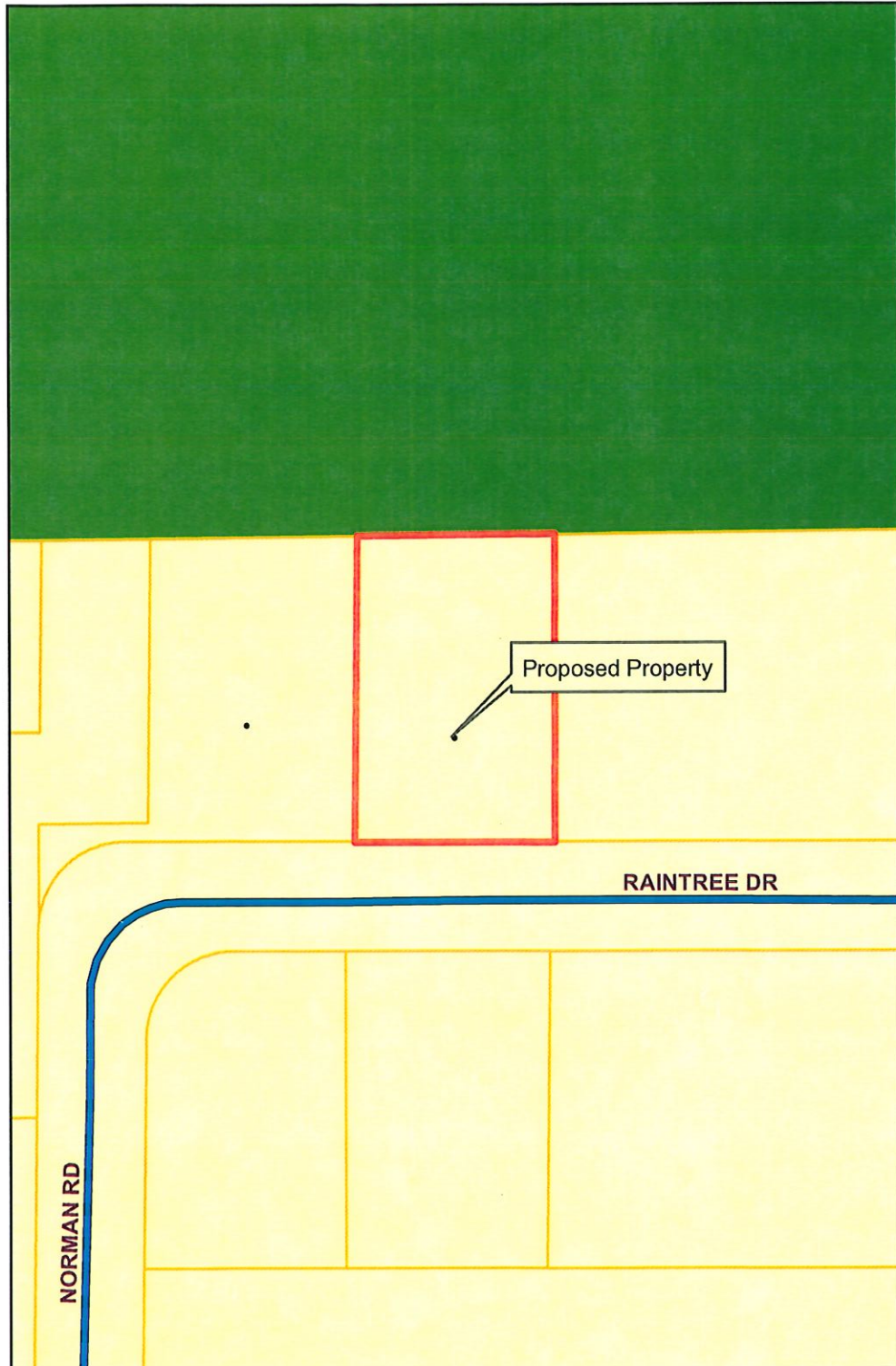


Exhibit C

Existing Land-Use

Prepared by:
 City of Gautier
 Planning Department

Legend

EXISTING LAND USE

ELU_08

- commercial-retail
- conservation
- civic
- industrial
- marina/fish camps
- high density residential
- mobile home
- mobile home park
- medium density residential
- office
- recreation
- very low to low density residential
- utility
- vacant

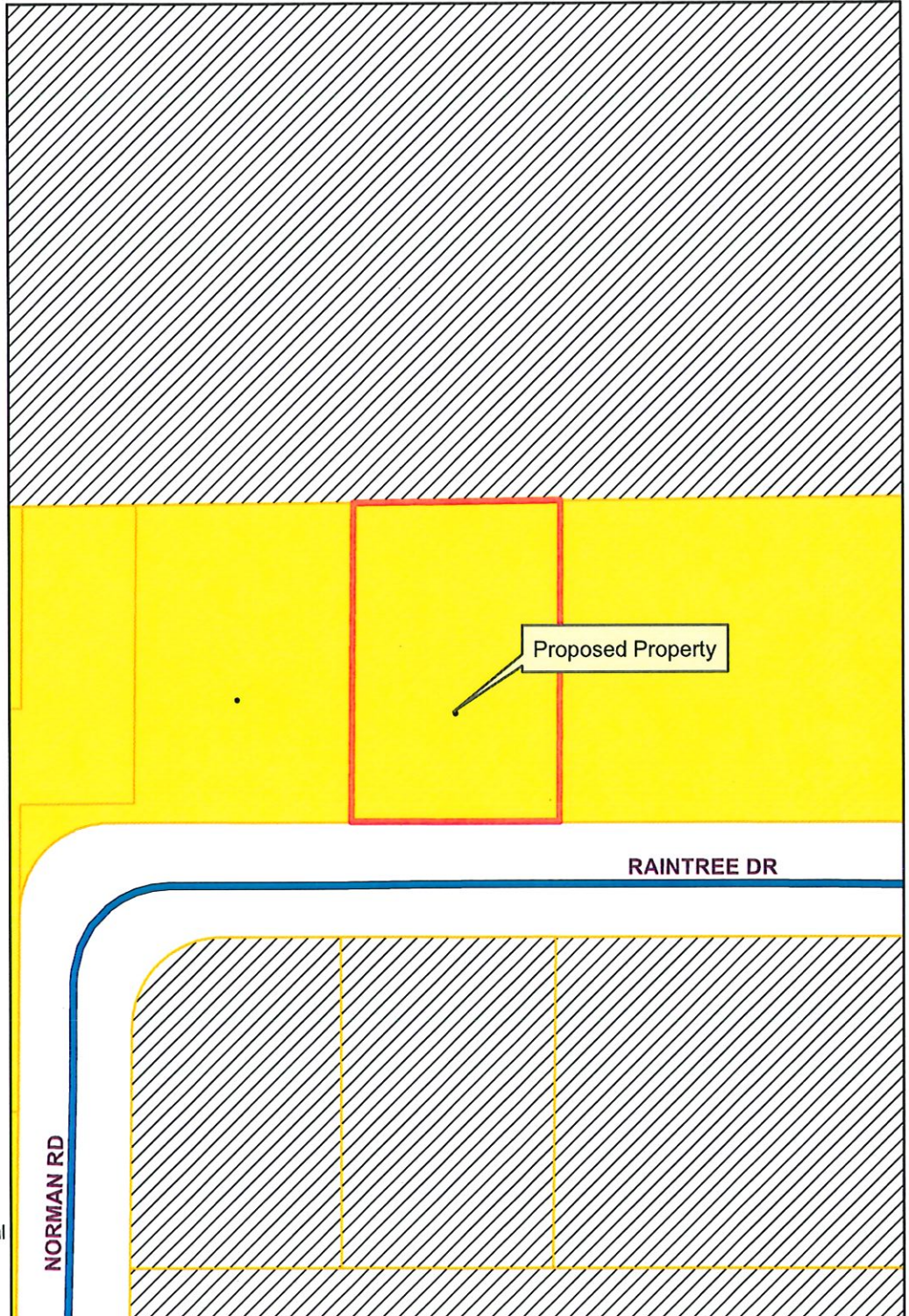

















Exhibit D Future Land-Use

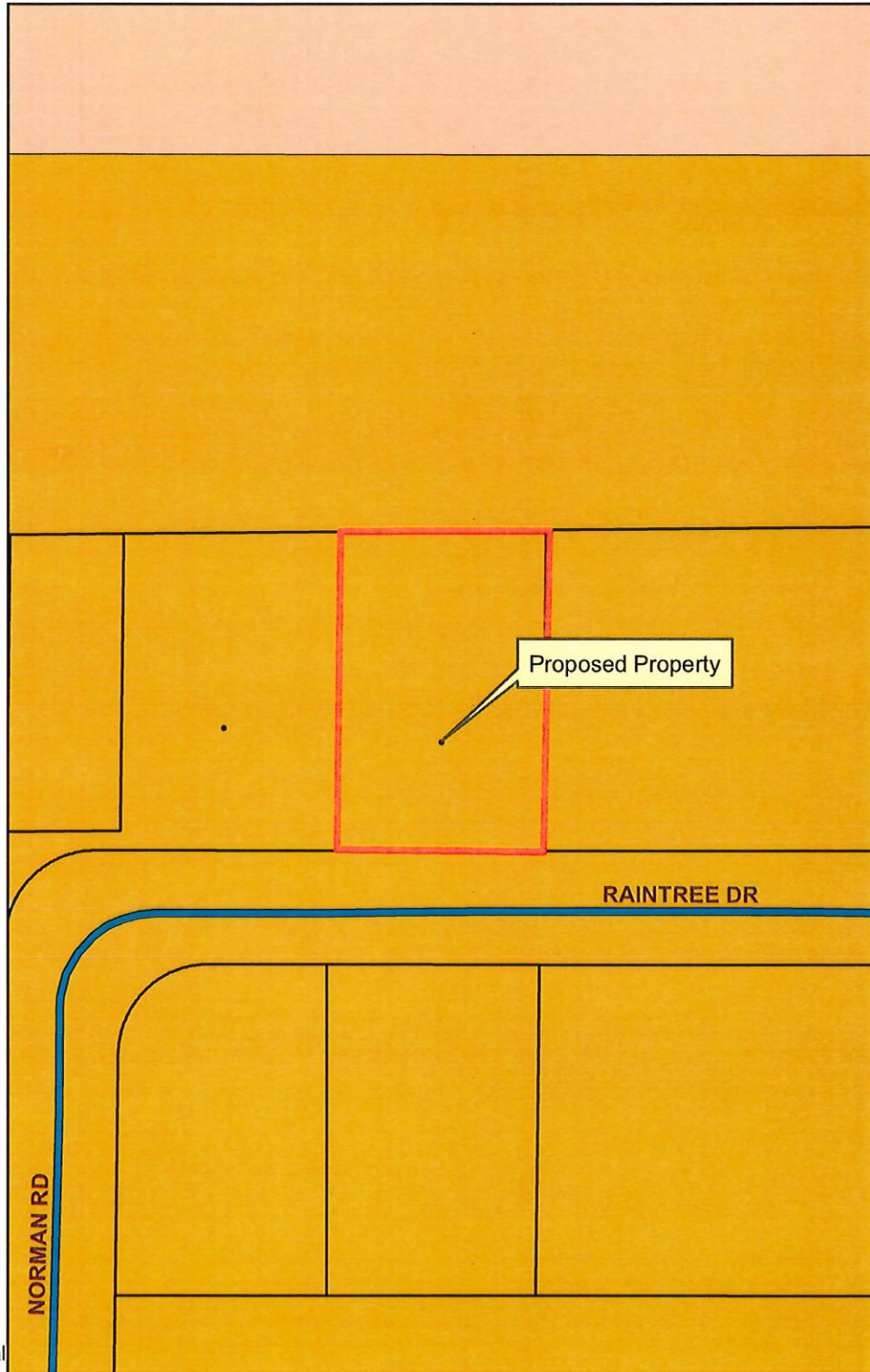
Prepared By:
City of Gautier
Planning Department

Legend

FUTURE LAND USE

FLU_Class

-  Civic
-  high impact commercial
-  Conservation
-  High Density Residential
-  Industrial
-  Low Density Residential
-  Medium Density Residential
-  Mobile Home Residential
-  low impact Commercial
-  Recreational
-  recreational commercial
-  Regional Scale Commercial
-  mixed use residential
-  Town Center
-  Very Low Density Residential



Gautier Planning Commission

Regular Meeting Agenda

May 1, 2025

GPC #25-19-VAR

1424 Wesleyan Street

VII. NEW BUSINESS

4. Consider a request for a two-foot (2') variance to fence height in a front yard in a R-1 Low Density Single-Family Residential Zoning District. 1424 Wesleyan Street, (GPC #25-19-VAR)

**CITY OF GAUTIER
STAFF REPORT**

To: Chairman and Members, Planning Commission

From: Scott Ankersen, Planning Director

Date: April 24, 2025

Subject: Consider a request for a two-foot (2') variance to fence height in a front yard in a R-1 Low Density Single-Family Residential Zoning District at 1424 Wesleyan Street, (GPC #25-19-VAR)

REQUEST:

The Planning Department has received a request from Nathan Chomoa for a two-foot (2') variance to fence height in a front yard in a R-1 Low Density Single-Family Residential Zoning District at 1424 Wesleyan Street, PID #86037408.000 (GPC #25-19-VAR). The application fee of \$175 was paid on March 25, 2025. All public notice requirements have been met.

BACKGROUND:

The applicant would like to put a 6' fence along part of his front yard. The 6' fence would also run along the property line of his secondary front yard. Per the Unified Development Ordinance (UDO), fences shall not exceed four feet in height within a designated front yard. The applicant will need a two-foot (2') variance to fence height in a front yard.

DISCUSSION:

The applicant is asking for a two-foot (2') variance to fence height in a front yard. He is wanting to put a 6' fence along a portion of his front yard, and along the property line of his secondary front yard. The UDO does not allow a fence to be more than four feet in height within a designated front yard.

DETERMINATION OF APPLICABLE LAW:

The Unified Development Ordinance (UDO) defines **Variances** as:

A Variance is a relaxation of the terms of the Unified Development Ordinance where such Variance will not be contrary to the public interest and where, owing to conditions peculiar to the property, a literal enforcement of the Ordinance would result in an unnecessary or undue hardship. As used in this Ordinance, a Variance is authorized only for height, area and size of structure, or size of yards,

separation of uses, open spaces, off-street parking spaces and some subdivision of property. The establishment or expansion of a use not permitted shall not be allowed by Variance.

The UDO defines **Hardship** as:

Hardship means the unnecessary hardship that would result from a failure to grant the requested variance or special exception. An unnecessary hardship exists if:

- (1) the land in question cannot yield a reasonable return if used only
 - (a) for a purpose allowed in that zone (applicable to special exceptions), or
 - (b) as permitted by the dimensional requirements of this ordinance (applicable to variances);
- (2) that the plight of the owner is due to unique circumstances of the land for which the variance or special exception is sought; and
- (3) that the use to be authorized by the variance will not alter the essential character of the locality.

UDO SECTION 4.18: Variance

In certain circumstances, a Variance from the dimensional requirements (i.e. height, setbacks, square footage) of this ordinance may be granted if the applicant can prove that because of physical constraints of the property involved, he is not able to build the same type of structure that other persons with the same zoning classification can build. Variances for uses permitted will not be considered in as much as "use Variances" are not legal in the State of Mississippi.

Most Variances must be granted by the City Council; however, certain minor Variances may be granted by the Economic Development Director in accordance with *Section 4.18.3* below.

4.18.1 Who May Initiate

A request for a Variance may be initiated by the property owner or agent of the owner provided that said property has not been denied a previous request for a Variance for the same property or portion of property within the past twelve (12) months.

4.18.2 Application for Variance

Applications for a Variance (from dimensional requirements) may be filed on the appropriate application available from the Economic Development/Planning Department and shall include all requested information, attachments and submittals:

4.18.3 Administrative Variances

The following dimensional variances may be granted by the Economic Development Director at his/her discretion (Note: Within the COR, Corridor Overlay District, applicants shall be required to mitigate a requested dimensional variance in accordance with the Tier Land Use Provisions in Section 5.11):

- A. 30% of required off-street parking spaces and/or
- B. 30% of required setbacks from property lines

4.18.4 Criteria for Approval

The Variance application shall demonstrate the following:

- A. That special conditions and circumstances exist which are peculiar to this particular site (lot or parcel), structure or building involved and which are not applicable to other sites (lots or parcels) or structures or buildings in the same district;
- B. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the provisions of this Ordinance;
- C. That the special conditions and circumstances do not result from actions of the applicant; and
- D. That granting the Variance requested will not confer upon the applicant any special privilege that is denied by this Ordinance to other similar sites (lots or parcels) structures or buildings in the same district.

RECOMMENDATION & CONCLUSION:

If recommending approval, Planning Commission shall record that the evidence presented meets all "Criteria for Approval" from the UDO as listed above.

The Planning Commission may:

- 1. Recommend that City Council approve the variance request as presented;
- 2. Recommend that City Council approve the variance request with changes; or
- 3. Recommend that City Council deny variance request.

ATTACHMENTS:

- 1. Applicant's Exhibit 1 – Application
- 2. City's Exhibit A – Location Map
- 3. City's Exhibit B – Existing Zoning Map
- 4. City's Exhibit C – Existing Land Use Map
- 5. City's Exhibit D – Future Land Use Map

PLANNING DEPARTMENT
PUBLIC HEARING APPLICATION

Public Hearing Number

25-19-VAR

<u>TO BE HEARD BY GAUTIER PLANNING COMMISSION:</u>	<u>FEE:</u>
Variance _____	\$176.00
*Includes \$1.00 filing fee per MS Code §25-60-5	

Name of Applicant: Nathan Chomoz

Name of Business: _____ Phone: 858-357-7286

Property Address: 1424 Wesleyan St. Mailing Address (if Different): _____

E-Mail Address: echomoz18@gmail.com

Reason for request, location and intended use of Property: Fence Height - 2' variance
for front yard

ATTACHMENTS REQUIRED AS APPLICABLE:

- 1. Diagram of intended use, showing dimensions and distances of property, building with setbacks, parking spaces, entrances and exits.
- 2. A detailed project narrative.
- _____ 3. Copy of protective covenants or deed restrictions, if any.
- _____ 4. Copies of approvals, or requests for approval, from other agencies, such as, but not limited to, the Mississippi State Department of Health, U.S. Army Corp of Engineers, Mississippi Department of Environmental Quality and Department of Marine Resources.
- _____ 5. Any other information requested by the Planning Director.

Signature of Applicant: [Signature]

Date of Application: 3-25-25

FOR OFFICE USE ONLY	
Date Received <u>3/25/25</u>	Verify as Complete <u>[Signature]</u>
Fee Amount Received <u>176.00</u>	Initials of Employee Receiving Application <u>Balis</u>

VARIANCE

Criteria for Approval

1. What special conditions and circumstances exist which are peculiar to this particular site (lot or parcel), structure or building involved and which are not applicable to other sites (lots or parcels), or structures or buildings in the same district? *None*

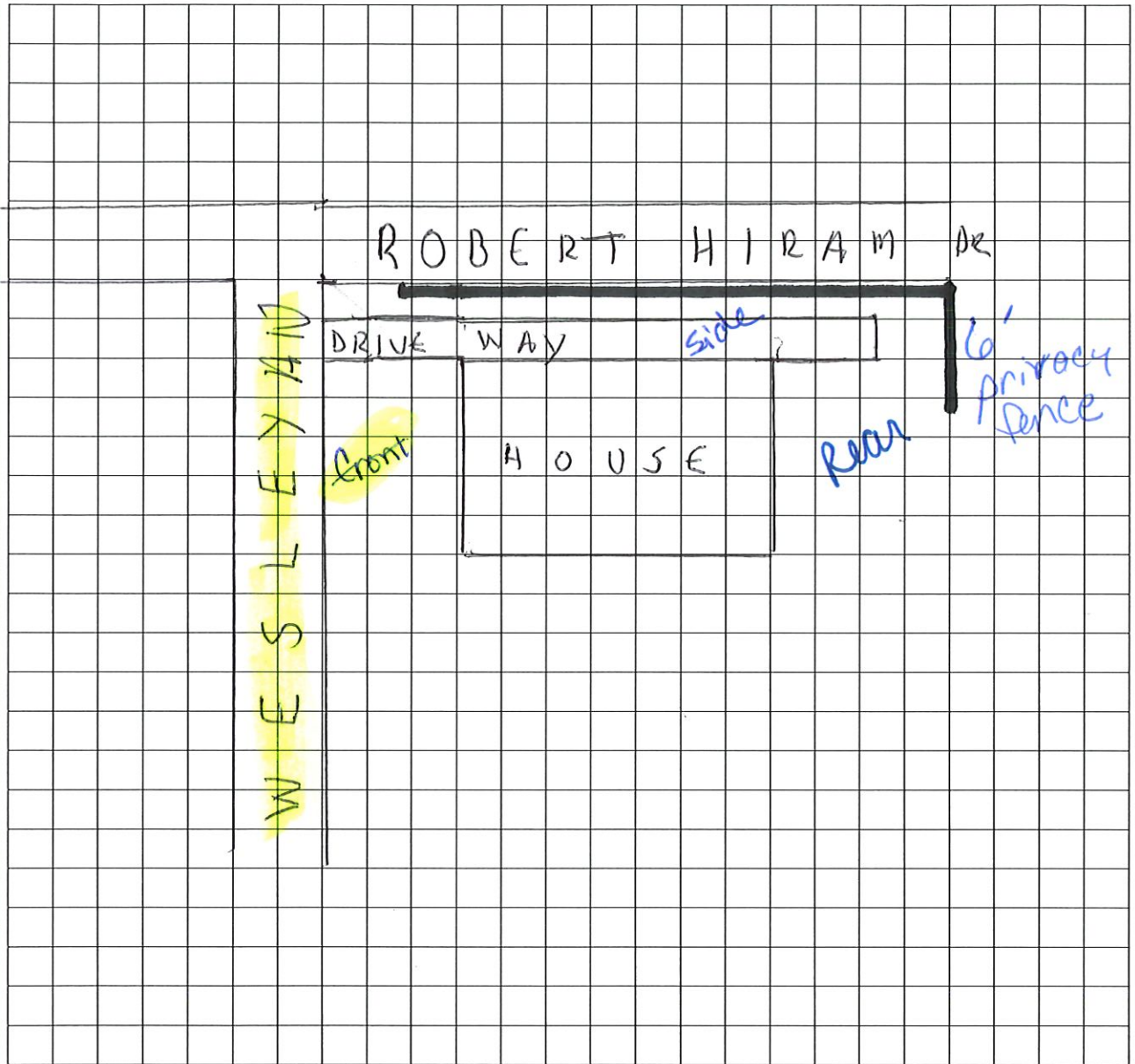
2. Are these special conditions and circumstances a result of your actions? Explain. *No*

3. How will the literal interpretation of the provisions of this Ordinance deprive you of rights commonly enjoyed by other properties in the same district under the provisions of this Ordinance? Explain.

It's a busy street and we have 3 small children playing next to it.

4. Will the granting of the Variance requested confer upon you any special privilege that is denied by this Ordinance to other similar sites (lots or parcels), structures or buildings in the same district? Explain. *No.*

DIAGRAM



Narrative

I am a retiring Marine and Coast Guard Veteran. After being stationed in Pascagoula for the last three years, my family and I found our forever home in Gautier, Mississippi. The house presented one main concern that being the high speed of traffic despite traffic signs. Unknown to us this Ordinance we hired a fencing company, Gulf Coast Fence, Inc. to eliminate the potential of our kids going into traffic. We were under the understanding the fencers know the laws and City ordinances. This was a mistake as we unknowingly built a fence too tall.

V.A. GUARANTEED LOAN AND ASSUMPTION POLICY RIDER

**NOTICE: THIS LOAN IS NOT ASSUMABLE
WITHOUT THE APPROVAL OF THE
DEPARTMENT OF VETERANS AFFAIRS OR
ITS AUTHORIZED AGENT.**

Chomoa

Loan #: REA0000278786

MIN: 100072450011991153

Case #: 23-23-6-0443492

THIS V.A. GUARANTEED LOAN AND ASSUMPTION POLICY RIDER is made this 16th day of **January, 2025**, and is incorporated into and amends and supplements the Mortgage, Mortgage Deed, Deed of Trust, or Security Deed (herein "Security Instrument") dated of even date herewith, given by the undersigned (herein "Borrower") to secure Borrower's Note to **CMG Mortgage, Inc. dba CMG Home Loans** (herein "Lender") and covering the property described in the Security Instrument and located at **1424 Wesleyan St, Gautier, MS 39553** (Property Address).

V.A. GUARANTEED LOAN COVENANT: In addition to the representations, warranties, covenants, and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

If the indebtedness secured hereby be guaranteed or insured under Title 38, United States Code, such Title and Regulations issued thereunder and in effect on the date hereof will govern the rights,

VA GUARANTEED LOAN AND ASSUMPTION POLICY RIDER

53.47

Page 1 of 3



duties and liabilities of Borrower and Lender. Any provisions of the Security Instrument or other instruments executed in connection with said indebtedness which are inconsistent with said Title or Regulations, including, but not limited to, the provision for payment of any sum in connection with prepayment of the secured indebtedness and the provision that the Lender may accelerate payment of the secured indebtedness pursuant to Covenant 19 of the Security Instrument, are hereby amended or negated to the extent necessary to conform such instruments to said Title or Regulations.

LATE CHARGE: At Lender's option, Borrower will pay a "late charge" not exceeding Four percent (4.000%) of the overdue installment (principal, interest, and escrow for taxes and insurance) when paid more than Fifteen (15) days after the due date thereof to cover the extra expense involved in handling delinquent payments, but such "late charge" will not be payable out of the proceeds of any sale made to satisfy the indebtedness secured hereby, unless such proceeds are sufficient to discharge the entire indebtedness and all proper costs and expenses secured hereby.

GUARANTY: Should the Department of Veterans Affairs fail or refuse to issue its guaranty in full amount within 60 days from the date that this loan would normally become eligible for such guaranty committed upon by the Department of Veterans Affairs under the provisions of Title 38 of the U.S. Code "Veterans Benefits," the Mortgagee may declare the indebtedness hereby secured at once due and payable and may foreclose immediately or may exercise any other rights hereunder or take any other proper action as by law provided.

TRANSFER OF THE PROPERTY: This loan may be declared immediately due and payable upon transfer of the property securing such loan to any transferee, unless the acceptability of the assumption of the loan is established pursuant to 38 U.S.C. 3714.

An authorized transfer ("assumption") of the property will also be subject to additional covenants and agreements as set forth below:

(a) **ASSUMPTION FUNDING FEE:** A fee equal to one-half of one percent of the balance of this loan as of the date of transfer of the property shall be payable at the time of transfer to the loan holder or its authorized agent, as trustee for the VA. If the assumer fails to pay this fee at the time of transfer, the fee shall constitute an additional debt to that already secured by this instrument, shall bear interest at the rate herein provided, and at the option of the payee of the indebtedness hereby secured or any transferee thereof, shall be immediately due and payable. This fee is automatically waived if the assumer is exempt under the provisions of 38 U.S.C. 3729(c).

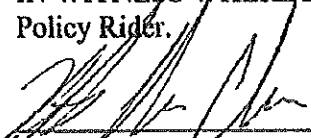
(b) **ASSUMPTION PROCESSING CHARGE:** Upon application for approval to allow assumption and transfer of this loan, a processing fee may be charged by the loan holder or its authorized agent for determining the creditworthiness of the assumer and subsequently revising the holder's ownership records when an approved transfer is completed. The amount of this charge shall not exceed the maximum established by the VA for a loan to which 38 U.S.C. 3714 applies.

(c) **ASSUMPTION INDEMNITY LIABILITY:** If this obligation is assumed, then the assumer hereby agrees to assume all of the obligations of the Veteran under the terms of the instruments creating and securing the loan. The assumer further agrees to indemnify the VA to the




extent of any claim payment arising from the guaranty or insurance of the indebtedness created by this instrument.

IN WITNESS WHEREOF, Borrower(s) has executed this V.A. Guaranteed Loan and Assumption Policy Rider.



- BORROWER - Nathan Andrew Chomoa (SEAL)



- BORROWER - Elizabeth Ann Chomoa (SEAL)



EXHIBIT "A" - LEGAL DESCRIPTION

THE FOLLOWING PROPERTY SITUATED IN THE COUNTY OF JACKSON, STATE OF MISSISSIPPI, AND DESCRIBED AS FOLLOWS:

LOT 11, OAKLEIGH PLACE SUBDIVISION, IN THE CITY OF GAUTIER, IN CLAIM SECTION 13 AND 14, TOWNSHIP 8 SOUTH, RANGE 7 WEST, JACKSON COUNTY, MISSISSIPPI, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 17, PAGE 38, RECORDS OF OFFICIAL PLATS OF JACKSON COUNTY, MISSISSIPPI.

PARCEL ID: 86037408.000

**COMMONLY KNOWN AS 1424 WESLEYAN STREET, GAUTIER, MS 39553
HOWEVER, BY SHOWING THIS ADDRESS NO ADDITIONAL COVERAGE IS PROVIDED**

**NOTE: FOR RECORDING PURPOSES, THE INDEXING INSTRUCTIONS ARE AS FOLLOWS: LOT 11, OAKLEIGH PLACE SUBDIVISION, CITY OF GAUTIER, JACKSON COUNTY, MISSISSIPPI
COMPANY WILL NOT SHOW THIS REQUIREMENT AS AN EXCEPTION TO POLICY COVERAGE.
JACKSON COUNTY, MISSISSIPPI**

**PRIOR DEED: BOOK: 2150 PAGE: 144 INSTRUMENT: 202400130
PROPERTY ADDRESS: 1424 WESLEYAN STREET, GAUTIER, MS 39553
PARCEL ID: 86037408.000**

RECORDED TRUE COPY

Prepared By:
Kellee Porter
CMG Mortgage, Inc. dba CMG Home
Loans
3160 Crow Canyon Road, Suite 400
San Ramon, CA 94583

After Recording Return To:
First American Mortgage Solutions
ATTN: C/O CMG Mortgage Solutions MS:
161-C
1795 International Way
Idaho Falls, ID 83402
866-659-8989

[Space Above This Line For Recording Data]

DEED OF TRUST

Chomoa
Loan #: REA0000278786
MIN: 100072450011991153
MERS Phone: 1-888-679-6377
PIN: 86037408.000
Case #: 23-23-6-0443492

Grantor(s): Nathan Andrew Chomoa and Elizabeth Ann Chomoa, Husband and Wife.

Address: 1424 Wesleyan St, Gautier, MS 39553
Phone: (858) 357-7286

Grantee/Beneficiary: Mortgage Electronic Registration Systems, Inc.

Address: 11819 Miami Street, Suite 100, Omaha, NE 68164; P.O. Box 2026, Flint, MI 48501-2026
Phone: 1-888-679-6377

Lender: CMG Mortgage, Inc. dba CMG Home Loans

Address: 3160 Crow Canyon Road, Suite 400, San Ramon, CA 94583
Phone: 800-501-2001

Trustee: Avenue 365 Lender Services, LLC a Guardian Asset Management Company

Address: 2300 East Lincoln Highway, Suite 700, Langhorne, PA 19047
Phone: (877) 365-2836

Legal Description: Legal Description attached hereto and made a part hereof.



(F) "Riders" means all Riders to this Security Instrument that are signed by Borrower. All such Riders are incorporated into and deemed to be a part of this Security Instrument. The following Riders are to be signed by Borrower [check box as applicable]:

- | | | |
|--|---|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Other(s) [specify] _____ |
| <input type="checkbox"/> 1-4 Family Rider | <input type="checkbox"/> Planned Unit Development Rider | |
| <input type="checkbox"/> Second Home Rider | <input checked="" type="checkbox"/> VA Rider | |

(G) "Security Instrument" means this document, which is dated **January 16, 2025**, together with all Riders to this document.

Additional Definitions

(H) "Applicable Law" means all controlling applicable federal, state, and local statutes, regulations, ordinances, and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments, and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association, or similar organization.

(J) "Default" means: (i) the failure to pay any Periodic Payment or any other amount secured by this Security Instrument on the date it is due; (ii) a breach of any representation, warranty, covenant, obligation, or agreement in this Security Instrument; (iii) any materially false, misleading, or inaccurate information or statement to Lender provided by Borrower or any persons or entities acting at Borrower's direction or with Borrower's knowledge or consent, or failure to provide Lender with material information in connection with the Loan, as described in Section 8; or (iv) any action or proceeding described in Section 12(e).

(K) "Electronic Fund Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone or other electronic device capable of communicating with such financial institution, wire transfers, and automated clearinghouse transfers.

(L) "Electronic Signature" means an "Electronic Signature" as defined in the UETA or E-SIGN, as applicable.

(M) "E-SIGN" means the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 *et seq.*), as it may be amended from time to time, or any applicable additional or successor legislation that governs the same subject matter.

(N) "Escrow Items" means: (i) taxes and assessments and other items that can attain priority over this Security Instrument as a lien or encumbrance on the Property; (ii) leasehold payments or ground rents on the Property, if any; (iii) premiums for any and all insurance required by Lender under Section 5; (iv) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 11; and (v) Community Association Dues, Fees, and Assessments if Lender requires that they be escrowed beginning at Loan



closing or at any time during the Loan term.

(O) "**Loan**" means the debt obligation evidenced by the Note, plus interest, any prepayment charges, costs, expenses, and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(P) "**Loan Servicer**" means the entity that has the contractual right to receive Borrower's Periodic Payments and any other payments made by Borrower, and administers the Loan on behalf of Lender. Loan Servicer does not include a sub-servicer, which is an entity that may service the Loan on behalf of the Loan Servicer.

(Q) "**Miscellaneous Proceeds**" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(R) "**Mortgage Insurance**" means insurance protecting Lender against the nonpayment of, or Default on, the Loan.

(S) "**Partial Payment**" means any payment by Borrower, other than a voluntary prepayment permitted under the Note, which is less than a full outstanding Periodic Payment.

(T) "**Periodic Payment**" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3.

(U) "**Property**" means the property described below under the heading "TRANSFER OF RIGHTS IN THE PROPERTY."

(V) "**Rents**" means all amounts received by or due Borrower in connection with the lease, use, and/or occupancy of the Property by a party other than Borrower.

(W) "**RESPA**" means the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 *et seq.*) and its implementing regulation, Regulation X (12 C.F.R. Part 1024), as they may be amended from time to time, or any additional or successor federal legislation or regulation that governs the same subject matter. When used in this Security Instrument, "RESPA" refers to all requirements and restrictions that would apply to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(X) "**Successor in Interest of Borrower**" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

(Y) "**UETA**" means the Uniform Electronic Transactions Act, as enacted by the jurisdiction in which the Property is located, as it may be amended from time to time, or any applicable additional or successor legislation that governs the same subject matter.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender (i) the repayment of the Loan, and all renewals, extensions, and modifications of the Note, and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For



this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY of Jackson:

Legal Description attached hereto and made a part hereof.

which currently has the address of 1424 Wesleyan St, Gautier, Mississippi 39553 ("Property Address");

TOGETHER WITH all the improvements now or subsequently erected on the property, including replacements and additions to the improvements on such property, all property rights, including, without limitation, all easements, appurtenances, royalties, mineral rights, oil or gas rights or profits, water rights, and fixtures now or subsequently a part of the property. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER REPRESENTS, WARRANTS, COVENANTS, AND AGREES that: (i) Borrower lawfully owns and possesses the Property conveyed in this Security Instrument in fee simple or lawfully has the right to use and occupy the Property under a leasehold estate; (ii) Borrower has the right to grant and convey the Property or Borrower's leasehold interest in the Property; and (iii) the Property is unencumbered, and not subject to any other ownership interest in the Property, except for encumbrances and ownership interests of record. Borrower warrants generally the title to the Property and covenants and agrees to defend the title to the Property against all claims and demands, subject to any encumbrances and ownership interests of record as of Loan closing.

THIS SECURITY INSTRUMENT combines uniform covenants for national use with limited variations and non-uniform covenants that reflect specific Mississippi state requirements to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower will pay each Periodic Payment when due. Borrower will also pay any prepayment charges and late charges due under the Note, and any other amounts due under this Security Instrument. Payments due under the Note and this Security Instrument must be made in U.S. currency. If any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check, or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a U.S. federal agency, instrumentality, or entity; or (d) Electronic Fund Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or



at such other location as may be designated by Lender in accordance with the notice provisions in Section 16. Lender may accept or return any Partial Payments in its sole discretion pursuant to Section 2.

Any offset or claim that Borrower may have now or in the future against Lender will not relieve Borrower from making the full amount of all payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Acceptance and Application of Payments or Proceeds.

(a) Acceptance and Application of Partial Payments. Lender may accept and either apply or hold in suspense Partial Payments in its sole discretion in accordance with this Section 2. Lender is not obligated to accept any Partial Payments or to apply any Partial Payments at the time such payments are accepted, and also is not obligated to pay interest on such unapplied funds. Lender may hold such unapplied funds until Borrower makes payment sufficient to cover a full Periodic Payment, at which time the amount of the full Periodic Payment will be applied to the Loan. If Borrower does not make such a payment within a reasonable period of time, Lender will either apply such funds in accordance with this Section 2 or return them to Borrower. If not applied earlier, Partial Payments will be credited against the total amount due under the Loan in calculating the amount due in connection with any foreclosure proceeding, payoff request, loan modification, or reinstatement. Lender may accept any payment insufficient to bring the Loan current without waiver of any rights under this Security Instrument or prejudice to its rights to refuse such payments in the future.

(b) Order of Application of Partial Payments and Periodic Payments. Except as otherwise described in this Section 2, if Lender applies a payment, such payment will be applied to each Periodic Payment in the order in which it became due, beginning with the oldest outstanding Periodic Payment, as follows: first to interest and then to principal due under the Note, and finally to Escrow Items. If all outstanding Periodic Payments then due are paid in full, any payment amounts remaining may be applied to late charges and to any amounts then due under this Security Instrument. If all sums then due under the Note and this Security Instrument are paid in full, any remaining payment amount may be applied, in Lender's sole discretion, to a future Periodic Payment or to reduce the principal balance of the Note.

If Lender receives a payment from Borrower in the amount of one or more Periodic Payments and the amount of any late charge due for a delinquent Periodic Payment, the payment may be applied to the delinquent payment and the late charge.

When applying payments, Lender will apply such payments in accordance with Applicable Law.

(c) Voluntary Prepayments. Voluntary prepayments will be applied as described in the Note.

(d) No Change to Payment Schedule. Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note will not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items.

(a) Escrow Requirement; Escrow Items. Borrower must pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum of money to provide for payment of amounts due for all Escrow Items (the "Funds"). The amount of the Funds required to be paid each month may change during the term of the Loan. Borrower must promptly furnish to Lender all notices or invoices of amounts to be paid under this Section 3.

(b) Payment of Funds; Waiver. Borrower must pay Lender the Funds for Escrow Items unless



Lender waives this obligation in writing. Lender may waive this obligation for any Escrow Item at any time. In the event of such waiver, Borrower must pay directly, when and where payable, the amounts due for any Escrow Items subject to the waiver. If Lender has waived the requirement to pay Lender the Funds for any or all Escrow Items, Lender may require Borrower to provide proof of direct payment of those items within such time period as Lender may require. Borrower's obligation to make such timely payments and to provide proof of payment is deemed to be a covenant and agreement of Borrower under this Security Instrument. If Borrower is obligated to pay Escrow Items directly pursuant to a waiver, and Borrower fails to pay timely the amount due for an Escrow Item, Lender may exercise its rights under Section 9 to pay such amount and Borrower will be obligated to repay to Lender any such amount in accordance with Section 9.

Lender may withdraw the waiver as to any or all Escrow Items at any time by giving a notice in accordance with Section 16; upon such withdrawal, Borrower must pay to Lender all Funds for such Escrow Items, and in such amounts, that are then required under this Section 3.

(c) Amount of Funds; Application of Funds. Lender may, at any time, collect and hold Funds in an amount up to, but not in excess of, the maximum amount a lender can require under RESPA. Lender will estimate the amount of Funds due in accordance with Applicable Law.

The Funds will be held in an institution whose deposits are insured by a U.S. federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender will apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender may not charge Borrower for: (i) holding and applying the Funds; (ii) annually analyzing the escrow account; or (iii) verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless Lender and Borrower agree in writing or Applicable Law requires interest to be paid on the Funds, Lender will not be required to pay Borrower any interest or earnings on the Funds. Lender will give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

(d) Surplus; Shortage and Deficiency of Funds. In accordance with RESPA, if there is a surplus of Funds held in escrow, Lender will account to Borrower for such surplus. If Borrower's Periodic Payment is delinquent by more than 30 days, Lender may retain the surplus in the escrow account for the payment of the Escrow Items. If there is a shortage or deficiency of Funds held in escrow, Lender will notify Borrower and Borrower will pay to Lender the amount necessary to make up the shortage or deficiency in accordance with RESPA.

Upon payment in full of all sums secured by this Security Instrument, Lender will promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower must pay (a) all taxes, assessments, charges, fines, and impositions attributable to the Property which have priority or may attain priority over this Security Instrument, (b) leasehold payments or ground rents on the Property, if any, and (c) Community Association Dues, Fees, and Assessments, if any. If any of these items are Escrow Items, Borrower will pay them in the manner provided in Section 3.

Borrower must promptly discharge any lien that has priority or may attain priority over this Security Instrument unless Borrower: (aa) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing under such agreement;



(bb) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which Lender determines, in its sole discretion, operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (cc) secures from the holder of the lien an agreement satisfactory to Lender that subordinates the lien to this Security Instrument (collectively, the "Required Actions"). If Lender determines that any part of the Property is subject to a lien that has priority or may attain priority over this Security Instrument and Borrower has not taken any of the Required Actions in regard to such lien, Lender may give Borrower a notice identifying the lien. Within 10 days after the date on which that notice is given, Borrower must satisfy the lien or take one or more of the Required Actions.

5. Property Insurance.

(a) **Insurance Requirement; Coverages.** Borrower must keep the improvements now existing or subsequently erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes, winds, and floods, for which Lender requires insurance. Borrower must maintain the types of insurance Lender requires in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan, and may exceed any minimum coverage required by Applicable Law. Borrower may choose the insurance carrier providing the insurance, subject to Lender's right to disapprove Borrower's choice, which right will not be exercised unreasonably.

(b) **Failure to Maintain Insurance.** If Lender has a reasonable basis to believe that Borrower has failed to maintain any of the required insurance coverages described above, Lender may obtain insurance coverage, at Lender's option and at Borrower's expense. Unless required by Applicable Law, Lender is under no obligation to advance premiums for, or to seek to reinstate, any prior lapsed coverage obtained by Borrower. Lender is under no obligation to purchase any particular type or amount of coverage and may select the provider of such insurance in its sole discretion. Before purchasing such coverage, Lender will notify Borrower if required to do so under Applicable Law. Any such coverage will insure Lender, but might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard, or liability and might provide greater or lesser coverage than was previously in effect, but not exceeding the coverage required under Section 5(a) or any restrictions under Applicable Law. Borrower acknowledges that the cost of the insurance coverage so obtained may significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender for costs associated with reinstating Borrower's insurance policy or with placing new insurance under this Section 5 will become additional debt of Borrower secured by this Security Instrument. These amounts will bear interest at the Note rate from the date of disbursement and will be payable, with such interest, upon notice from Lender to Borrower requesting payment.

(c) **Insurance Policies.** All insurance policies required by Lender and renewals of such policies: (i) will be subject to Lender's right to disapprove such policies; (ii) must include a standard mortgage clause; and (iii) must name Lender as mortgagee and/or as an additional loss payee. Lender will have the right to hold the policies and renewal certificates. If Lender requires, Borrower will promptly give to Lender proof of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy must include a standard mortgage clause and must name Lender as mortgagee and/or as an additional loss payee.

(d) **Proof of Loss; Application of Proceeds.** In the event of loss, Borrower must give prompt



notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Any insurance proceeds, whether or not the underlying insurance was required by Lender, will be applied to restoration or repair of the Property, if Lender deems the restoration or repair to be economically feasible and determines that Lender's security will not be lessened by such restoration or repair.

If the Property is to be repaired or restored, Lender will disburse from the insurance proceeds any initial amounts that are necessary to begin the repair or restoration, subject to any restrictions applicable to Lender. During the subsequent repair and restoration period, Lender will have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction (which may include satisfying Lender's minimum eligibility requirements for persons repairing the Property, including, but not limited to, licensing, bond, and insurance requirements) provided that such inspection must be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed, depending on the size of the repair or restoration, the terms of the repair agreement, and whether Borrower is in Default on the Loan. Lender may make such disbursements directly to Borrower, to the person repairing or restoring the Property, or payable jointly to both. Lender will not be required to pay Borrower any interest or earnings on such insurance proceeds unless Lender and Borrower agree in writing or Applicable Law requires otherwise. Fees for public adjusters, or other third parties, retained by Borrower will not be paid out of the insurance proceeds and will be the sole obligation of Borrower.

If Lender deems the restoration or repair not to be economically feasible or Lender's security would be lessened by such restoration or repair, the insurance proceeds will be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds will be applied in the order that Partial Payments are applied in Section 2(b).

(c) Insurance Settlements; Assignment of Proceeds. If Borrower abandons the Property, Lender may file, negotiate, and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 26 or otherwise, Borrower is unconditionally assigning to Lender (i) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note and this Security Instrument, and (ii) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, to the extent that such rights are applicable to the coverage of the Property. If Lender files, negotiates, or settles a claim, Borrower agrees that any insurance proceeds may be made payable directly to Lender without the need to include Borrower as an additional loss payee. Lender may use the insurance proceeds either to repair or restore the Property (as provided in Section 5(d)) or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower must occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and must continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent will not be unreasonably withheld, or unless extenuating circumstances exist that are beyond Borrower's control.

7. Preservation, Maintenance, and Protection of the Property; Inspections. Borrower will not



destroy, damage, or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower must maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless Lender determines pursuant to Section 5 that repair or restoration is not economically feasible, Borrower will promptly repair the Property if damaged to avoid further deterioration or damage.

If insurance or condemnation proceeds are paid to Lender in connection with damage to, or the taking of, the Property, Borrower will be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed, depending on the size of the repair or restoration, the terms of the repair agreement, and whether Borrower is in Default on the Loan. Lender may make such disbursements directly to Borrower, to the person repairing or restoring the Property, or payable jointly to both. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower remains obligated to complete such repair or restoration.

Lender may make reasonable entries upon and inspections of the Property. If Lender has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender will give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower will be in Default if, during the Loan application process, Borrower or any persons or entities acting at Borrower's direction or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan, including, but not limited to, overstating Borrower's income or assets, understating or failing to provide documentation of Borrower's debt obligations and liabilities, and misrepresenting Borrower's occupancy or intended occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.

(a) Protection of Lender's Interest. If: (i) Borrower fails to perform the covenants and agreements contained in this Security Instrument; (ii) there is a legal proceeding or government order that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien that has priority or may attain priority over this Security Instrument, or to enforce laws or regulations); or (iii) Lender reasonably believes that Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and/or rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions may include, but are not limited to: (I) paying any sums secured by a lien that has priority or may attain priority over this Security Instrument; (II) appearing in court; and (III) paying: (A) reasonable attorneys' fees and costs; (B) property inspection and valuation fees; and (C) other fees incurred for the purpose of protecting Lender's interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, exterior and interior inspections of the Property, entering the Property to make repairs, changing locks, replacing or boarding up doors and windows, draining water from pipes, eliminating building or other code violations or dangerous conditions, and having utilities turned on or off. Although Lender may take action under this Section 9, Lender is not required to do so and is not under any duty or obligation to do so. Lender will not be liable for not taking any or all actions authorized under this Section



9.

(b) Avoiding Foreclosure; Mitigating Losses. If Borrower is in Default, Lender may work with Borrower to avoid foreclosure and/or mitigate Lender's potential losses, but is not obligated to do so unless required by Applicable Law. Lender may take reasonable actions to evaluate Borrower for available alternatives to foreclosure, including, but not limited to, obtaining credit reports, title reports, title insurance, property valuations, subordination agreements, and third-party approvals. Borrower authorizes and consents to these actions. Any costs associated with such loss mitigation activities may be paid by Lender and recovered from Borrower as described below in Section 9(c), unless prohibited by Applicable Law.

(c) Additional Amounts Secured. Any amounts disbursed by Lender under this Section 9 will become additional debt of Borrower secured by this Security Instrument. These amounts may bear interest at the Note rate from the date of disbursement and will be payable, with such interest, upon notice from Lender to Borrower requesting payment.

(d) Leasehold Terms. If this Security Instrument is on a leasehold, Borrower will comply with all the provisions of the lease. Borrower will not surrender the leasehold estate and interests conveyed or terminate or cancel the ground lease. Borrower will not, without the express written consent of Lender, alter or amend the ground lease. If Borrower acquires fee title to the Property, the leasehold and the fee title will not merge unless Lender agrees to the merger in writing.

10. Assignment of Rents.

(a) Assignment of Rents. If the Property is leased to, used by, or occupied by a third party ("Tenant"), Borrower is unconditionally assigning and transferring to Lender any Rents, regardless of to whom the Rents are payable. Borrower authorizes Lender to collect the Rents, and agrees that each Tenant will pay the Rents to Lender. However, Borrower will receive the Rents until (i) Lender has given Borrower notice of Default pursuant to Section 26, and (ii) Lender has given notice to the Tenant that the Rents are to be paid to Lender. This Section 10 constitutes an absolute assignment and not an assignment for additional security only.

(b) Notice of Default. If Lender gives notice of Default to Borrower: (i) all Rents received by Borrower must be held by Borrower as trustee for the benefit of Lender only, to be applied to the sums secured by the Security Instrument; (ii) Lender will be entitled to collect and receive all of the Rents; (iii) Borrower agrees to instruct each Tenant that Tenant is to pay all Rents due and unpaid to Lender upon Lender's written demand to the Tenant; (iv) Borrower will ensure that each Tenant pays all Rents due to Lender and will take whatever action is necessary to collect such Rents if not paid to Lender; (v) unless Applicable Law provides otherwise, all Rents collected by Lender will be applied first to the costs of taking control of and managing the Property and collecting the Rents, including, but not limited to, reasonable attorneys' fees and costs, receiver's fees, premiums on receiver's bonds, repair and maintenance costs, insurance premiums, taxes, assessments, and other charges on the Property, and then to any other sums secured by this Security Instrument; (vi) Lender, or any judicially appointed receiver, will be liable to account for only those Rents actually received; and (vii) Lender will be entitled to have a receiver appointed to take possession of and manage the Property and collect the Rents and profits derived from the Property without any showing as to the inadequacy of the Property as security.

(c) Funds Paid by Lender. If the Rents are not sufficient to cover the costs of taking control of



and managing the Property and of collecting the Rents, any funds paid by Lender for such purposes will become indebtedness of Borrower to Lender secured by this Security Instrument pursuant to Section 9.

(d) Limitation on Collection of Rents. Borrower may not collect any of the Rents more than one month in advance of the time when the Rents become due, except for security or similar deposits.

(e) No Other Assignment of Rents. Borrower represents, warrants, covenants, and agrees that Borrower has not signed any prior assignment of the Rents, will not make any further assignment of the Rents, and has not performed, and will not perform, any act that could prevent Lender from exercising its rights under this Security Instrument.

(f) Control and Maintenance of the Property. Unless required by Applicable Law, Lender, or a receiver appointed under Applicable Law, is not obligated to enter upon, take control of, or maintain the Property before or after giving notice of Default to Borrower. However, Lender, or a receiver appointed under Applicable Law, may do so at any time when Borrower is in Default, subject to Applicable Law.

(g) Additional Provisions. Any application of the Rents will not cure or waive any Default or invalidate any other right or remedy of Lender. This Section 10 does not relieve Borrower of Borrower's obligations under Section 6.

This Section 10 will terminate when all the sums secured by this Security Instrument are paid in full.

11. Mortgage Insurance.

(a) Payment of Premiums; Substitution of Policy; Loss Reserve; Protection of Lender. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower will pay the premiums required to maintain the Mortgage Insurance in effect. If Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, and (i) the Mortgage Insurance coverage required by Lender ceases for any reason to be available from the mortgage insurer that previously provided such insurance, or (ii) Lender determines in its sole discretion that such mortgage insurer is no longer eligible to provide the Mortgage Insurance coverage required by Lender, Borrower will pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender.

If substantially equivalent Mortgage Insurance coverage is not available, Borrower will continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use, and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve will be non-refundable, even when the Loan is paid in full, and Lender will not be required to pay Borrower any interest or earnings on such loss reserve.

Lender will no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance.

If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower will pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written



agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 11 affects Borrower's obligation to pay interest at the Note rate.

(b) Mortgage Insurance Agreements. Mortgage Insurance reimburses Lender for certain losses Lender may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance policy or coverage.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. Any such agreements will not: (i) affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan; (ii) increase the amount Borrower will owe for Mortgage Insurance; (iii) entitle Borrower to any refund; or (iv) affect the rights Borrower has, if any, with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 (12 U.S.C. § 4901 *et seq.*), as it may be amended from time to time, or any additional or successor federal legislation or regulation that governs the same subject matter ("HPA"). These rights under the HPA may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

12. Assignment and Application of Miscellaneous Proceeds; Forfeiture.

(a) Assignment of Miscellaneous Proceeds. Borrower is unconditionally assigning the right to receive all Miscellaneous Proceeds to Lender and agrees that such amounts will be paid to Lender.

(b) Application of Miscellaneous Proceeds upon Damage to Property. If the Property is damaged, any Miscellaneous Proceeds will be applied to restoration or repair of the Property, if Lender deems the restoration or repair to be economically feasible and Lender's security will not be lessened by such restoration or repair. During such repair and restoration period, Lender will have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect the Property to ensure the work has been completed to Lender's satisfaction (which may include satisfying Lender's minimum eligibility requirements for persons repairing the Property, including, but not limited to, licensing, bond, and insurance requirements) provided that such inspection must be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed, depending on the size of the repair or restoration, the terms of the repair agreement, and whether Borrower is in Default on the Loan. Lender may make such disbursements directly to Borrower, to the person repairing or restoring the Property, or payable jointly to both. Unless Lender and Borrower agree in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender will not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If Lender deems the restoration or repair not to be economically feasible or Lender's security would be lessened by such restoration or repair, the Miscellaneous Proceeds will be applied to the sums secured by this Security



by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities, or Successors in Interest of Borrower or in amounts less than the amount then due, will not be a waiver of, or preclude the exercise of, any right or remedy by Lender.

14. Joint and Several Liability; Signatories; Successors and Assigns Bound. Borrower's obligations and liability under this Security Instrument will be joint and several. However, any Borrower who signs this Security Instrument but does not sign the Note: (a) signs this Security Instrument to mortgage, grant, and convey such Borrower's interest in the Property under the terms of this Security Instrument; (b) signs this Security Instrument to waive any applicable inchoate rights such as dower and curtesy and any available homestead exemptions; (c) signs this Security Instrument to assign any Miscellaneous Proceeds, Rents, or other earnings from the Property to Lender; (d) is not personally obligated to pay the sums due under the Note or this Security Instrument; and (e) agrees that Lender and any other Borrower can agree to extend, modify, forbear, or make any accommodations with regard to the terms of the Note or this Security Instrument without such Borrower's consent and without affecting such Borrower's obligations under this Security Instrument.

Subject to the provisions of Section 19, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, will obtain all of Borrower's rights, obligations, and benefits under this Security Instrument. Borrower will not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing.

15. Loan Charges.

(a) Tax and Flood Determination Fees. Lender may require Borrower to pay (i) a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan, and (ii) either (A) a one-time charge for flood zone determination, certification, and tracking services, or (B) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur that reasonably might affect such determination or certification. Borrower will also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency, or any successor agency, at any time during the Loan term, in connection with any flood zone determinations.

(b) Default Charges. If permitted under Applicable Law, Lender may charge Borrower fees for services performed in connection with Borrower's Default to protect Lender's interest in the Property and rights under this Security Instrument, including: (i) reasonable attorneys' fees and costs; (ii) property inspection, valuation, mediation, and loss mitigation fees; and (iii) other related fees.

(c) Permissibility of Fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower should not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

(d) Savings Clause. If Applicable Law sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then (i) any such loan charge will be reduced by the amount necessary to reduce the charge to the permitted limit, and (ii) any sums already collected from Borrower which exceeded



permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). To the extent permitted by Applicable Law, Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

16. Notices; Borrower's Physical Address. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing.

(a) Notices to Borrower. Unless Applicable Law requires a different method, any written notice to Borrower in connection with this Security Instrument will be deemed to have been given to Borrower when (i) mailed by first class mail, or (ii) actually delivered to Borrower's Notice Address (as defined in Section 16(c) below) if sent by means other than first class mail or Electronic Communication (as defined in Section 16(b) below). Notice to any one Borrower will constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. If any notice to Borrower required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

(b) Electronic Notice to Borrower. Unless another delivery method is required by Applicable Law, Lender may provide notice to Borrower by e-mail or other electronic communication ("Electronic Communication") if: (i) agreed to by Lender and Borrower in writing; (ii) Borrower has provided Lender with Borrower's e-mail or other electronic address ("Electronic Address"); (iii) Lender provides Borrower with the option to receive notices by first class mail or by other non-Electronic Communication instead of by Electronic Communication; and (iv) Lender otherwise complies with Applicable Law. Any notice to Borrower sent by Electronic Communication in connection with this Security Instrument will be deemed to have been given to Borrower when sent unless Lender becomes aware that such notice is not delivered. If Lender becomes aware that any notice sent by Electronic Communication is not delivered, Lender will resend such communication to Borrower by first class mail or by other non-Electronic Communication. Borrower may withdraw the agreement to receive Electronic Communications from Lender at any time by providing written notice to Lender of Borrower's withdrawal of such agreement.

(c) Borrower's Notice Address. The address to which Lender will send Borrower notice ("Notice Address") will be the Property Address unless Borrower has designated a different address by written notice to Lender. If Lender and Borrower have agreed that notice may be given by Electronic Communication, then Borrower may designate an Electronic Address as Notice Address. Borrower will promptly notify Lender of Borrower's change of Notice Address, including any changes to Borrower's Electronic Address if designated as Notice Address. If Lender specifies a procedure for reporting Borrower's change of Notice Address, then Borrower will report a change of Notice Address only through that specified procedure.

(d) Notices to Lender. Any notice to Lender will be given by delivering it or by mailing it by first class mail to Lender's address stated in this Security Instrument unless Lender has designated another address (including an Electronic Address) by notice to Borrower. Any notice in connection with this Security Instrument will be deemed to have been given to Lender only when actually received by Lender at Lender's designated address (which may include an Electronic Address). If any notice to Lender required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will



satisfy the corresponding requirement under this Security Instrument.

(e) Borrower's Physical Address. In addition to the designated Notice Address, Borrower will provide Lender with the address where Borrower physically resides, if different from the Property Address, and notify Lender whenever this address changes.

17. Governing Law; Severability; Rules of Construction. This Security Instrument is governed by federal law and the law of the State of Mississippi. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. If any provision of this Security Instrument or the Note conflicts with Applicable Law (i) such conflict will not affect other provisions of this Security Instrument or the Note that can be given effect without the conflicting provision, and (ii) such conflicting provision, to the extent possible, will be considered modified to comply with Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence should not be construed as a prohibition against agreement by contract. Any action required under this Security Instrument to be made in accordance with Applicable Law is to be made in accordance with the Applicable Law in effect at the time the action is undertaken.

As used in this Security Instrument: (a) words in the singular will mean and include the plural and vice versa; (b) the word "may" gives sole discretion without any obligation to take any action; (c) any reference to "Section" in this document refers to Sections contained in this Security Instrument unless otherwise noted; and (d) the headings and captions are inserted for convenience of reference and do not define, limit, or describe the scope or intent of this Security Instrument or any particular Section, paragraph, or provision.

18. Borrower's Copy. One Borrower will be given one copy of the Note and of this Security Instrument.

19. Transfer of the Property or a Beneficial Interest in Borrower. For purposes of this Section 19 only, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract, or escrow agreement, the intent of which is the transfer of title by Borrower to a purchaser at a future date.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, Lender will not exercise this option if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender will give Borrower notice of acceleration. The notice will provide a period of not less than 30 days from the date the notice is given in accordance with Section 16 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to, or upon, the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower and will be entitled to collect all expenses incurred in pursuing such remedies, including, but not limited to: (a) reasonable attorneys' fees and costs; (b) property inspection and valuation fees; and (c) other fees incurred to protect Lender's Interest in the Property and/or rights under this Security Instrument.

20. Borrower's Right to Reinstate the Loan after Acceleration. If Borrower meets certain conditions, Borrower will have the right to reinstate the Loan and have enforcement of this Security



Instrument discontinued at any time up to the later of (a) five days before any foreclosure sale of the Property, or (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate. This right to reinstate will not apply in the case of acceleration under Section 19.

To reinstate the Loan, Borrower must satisfy all of the following conditions: (aa) pay Lender all sums that then would be due under this Security Instrument and the Note as if no acceleration had occurred; (bb) cure any Default of any other covenants or agreements under this Security Instrument or the Note; (cc) pay all expenses incurred in enforcing this Security Instrument or the Note, including, but not limited to: (i) reasonable attorneys' fees and costs; (ii) property inspection and valuation fees; and (iii) other fees incurred to protect Lender's interest in the Property and/or rights under this Security Instrument or the Note; and (dd) take such action as Lender may reasonably require to assure that Lender's interest in the Property and/or rights under this Security Instrument or the Note, and Borrower's obligation to pay the sums secured by this Security Instrument or the Note, will continue unchanged.

Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (aaa) cash; (bbb) money order; (ccc) certified check, bank check, treasurer's check, or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a U.S. federal agency, instrumentality, or entity; or (ddd) Electronic Fund Transfer. Upon Borrower's reinstatement of the Loan, this Security Instrument and obligations secured by this Security Instrument will remain fully effective as if no acceleration had occurred.

21. Sale of Note. The Note or a partial interest in the Note, together with this Security Instrument, may be sold or otherwise transferred one or more times. Upon such a sale or other transfer, all of Lender's rights and obligations under this Security Instrument will convey to Lender's successors and assigns.

22. Loan Servicer. Lender may take any action permitted under this Security Instrument through the Loan Servicer or another authorized representative, such as a sub-servicer. Borrower understands that the Loan Servicer or other authorized representative of Lender has the right and authority to take any such action.

The Loan Servicer may change one or more times during the term of the Note. The Loan Servicer may or may not be the holder of the Note. The Loan Servicer has the right and authority to: (a) collect Periodic Payments and any other amounts due under the Note and this Security Instrument; (b) perform any other mortgage loan servicing obligations; and (c) exercise any rights under the Note, this Security Instrument, and Applicable Law on behalf of Lender. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made, and any other information RESPA requires in connection with a notice of transfer of servicing.

23. Notice of Grievance. Until Borrower or Lender has notified the other party (in accordance with Section 16) of an alleged breach and afforded the other party a reasonable period after the giving of such notice to take corrective action, neither Borrower nor Lender may commence, join, or be joined to any judicial action (either as an individual litigant or a member of a class) that (a) arises from the other party's actions pursuant to this Security Instrument or the Note, or (b) alleges that the other party has breached any provision of this Security Instrument or the Note. If Applicable Law provides a time period that must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this Section 23. The notice of Default given to Borrower pursuant to Section 26(a) and the notice of acceleration given to Borrower pursuant to Section 19 will be deemed to satisfy the notice and opportunity



to take corrective action provisions of this Section 23.

24. Hazardous Substances.

(a) Definitions. As used in this Section 24: (i) "Environmental Law" means any Applicable Laws where the Property is located that relate to health, safety, or environmental protection; (ii) "Hazardous Substances" include (A) those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law, and (B) the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, corrosive materials or agents, and radioactive materials; (iii) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (iv) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

(b) Restrictions on Use of Hazardous Substances. Borrower will not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower will not do, nor allow anyone else to do, anything affecting the Property that: (i) violates Environmental Law; (ii) creates an Environmental Condition; or (iii) due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects or could adversely affect the value of the Property. The preceding two sentences will not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

(c) Notices; Remedial Actions. Borrower will promptly give Lender written notice of: (i) any investigation, claim, demand, lawsuit, or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge; (ii) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release, or threat of release of any Hazardous Substance; and (iii) any condition caused by the presence, use, or release of a Hazardous Substance that adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower will promptly take all necessary remedial actions in accordance with Environmental Law. Nothing in this Security Instrument will create any obligation on Lender for an Environmental Cleanup.

25. Electronic Note Signed with Borrower's Electronic Signature. If the Note evidencing the debt for this Loan is electronic, Borrower acknowledges and represents to Lender that Borrower: (a) expressly consented and intended to sign the electronic Note using an Electronic Signature adopted by Borrower ("Borrower's Electronic Signature") instead of signing a paper Note with Borrower's written pen and ink signature; (b) did not withdraw Borrower's express consent to sign the electronic Note using Borrower's Electronic Signature; (c) understood that by signing the electronic Note using Borrower's Electronic Signature, Borrower promised to pay the debt evidenced by the electronic Note in accordance with its terms; and (d) signed the electronic Note with Borrower's Electronic Signature with the intent and understanding that by doing so, Borrower promised to pay the debt evidenced by the electronic Note in accordance with its terms.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

MISSISSIPPI--Single Family--Fannie Mac/Freddie Mac UNIFORM INSTRUMENT
Modified for VA
25303.20

Form 3025
07/2021
Page 19 of 21



86037408.000 AJAX 2021-G REO CORP

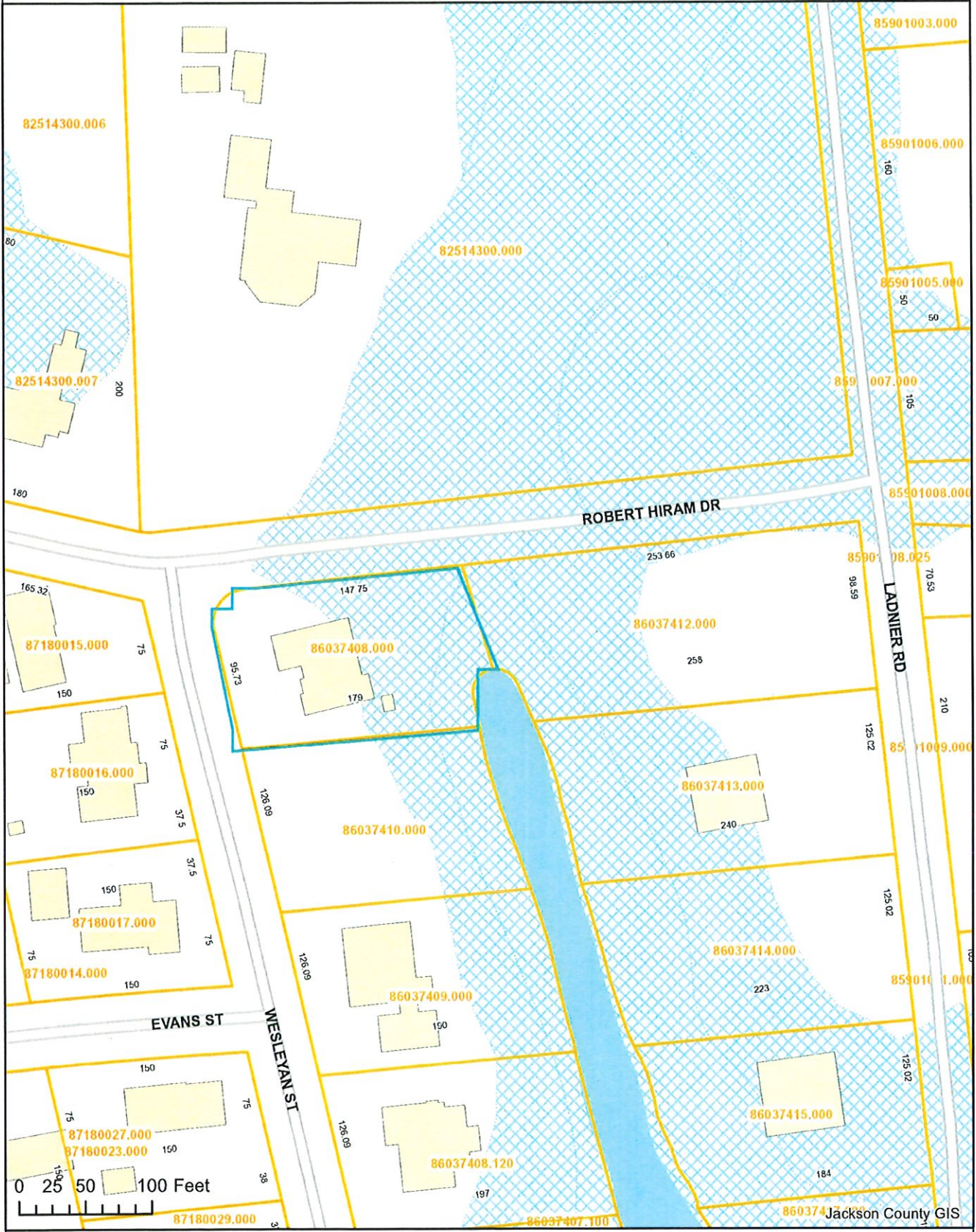


Exhibit A Location Map

Prepared by:
City of Gautier
Planning Department



Exhibit B Existing Zoning

Prepared by:
City of Gautier
Planning Department

Legend

Zoning

ZONECODE
















	AG
	C-1
	C-2
	C-3
	I-2
	MURC-1
	MURC-2
	MURC-MW
	PL
	PUD
	R-1
	R-2
	R-3
	RE
	TC



Exhibit C Existing Land-Use

Prepared by:
City of Gautier
Planning Department

Legend

EXISTING LAND USE

ELU_08

- commercial-retail
- conservation
- civic
- industrial
- marina/fish camps
- high density residential
- mobile home
- mobile home park
- medium density residential
- office
- recreation
- very low to low density residential
- utility
- vacant

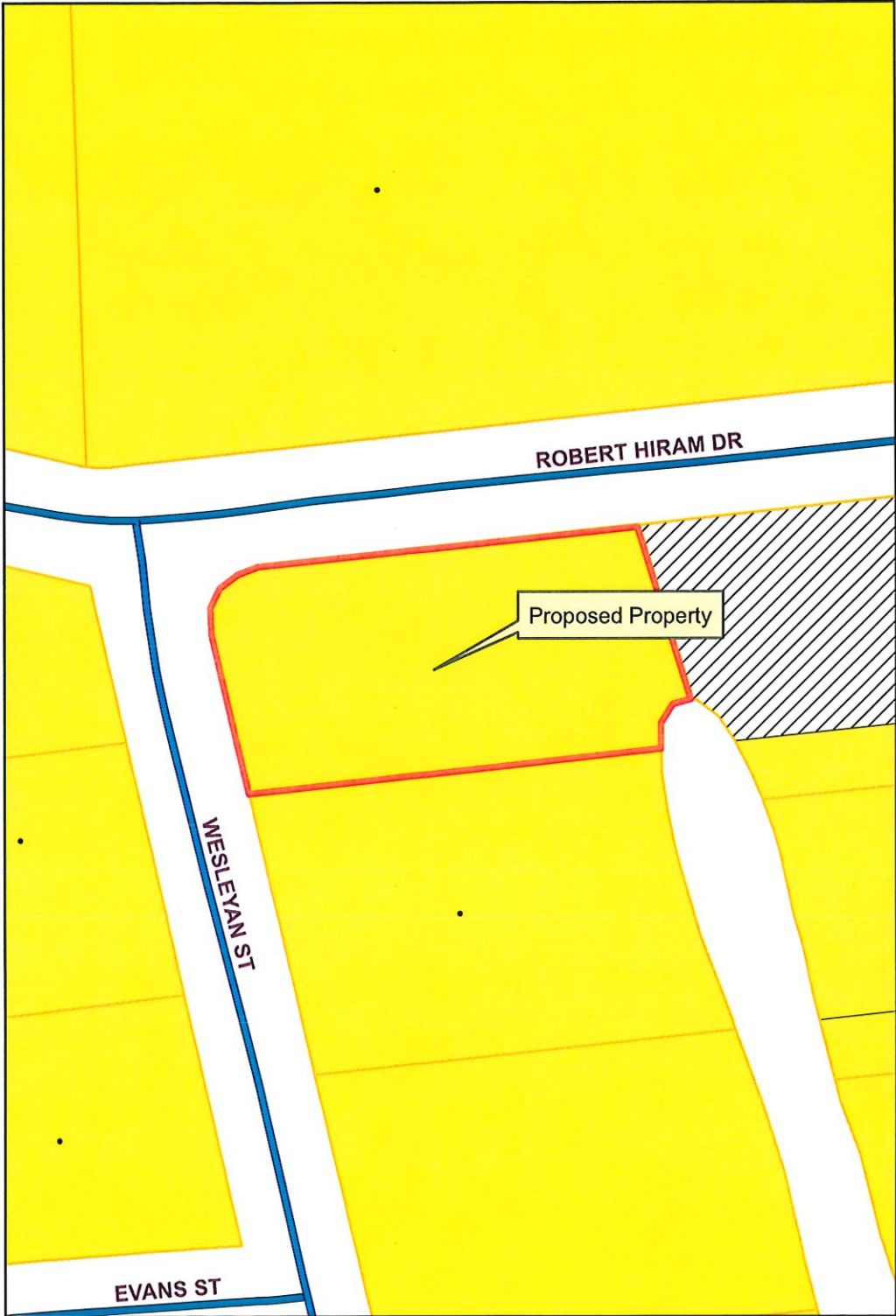


Exhibit D Future Land-Use

Prepared By:
City of Gautier
Planning Department

Legend

FUTURE LAND USE

FLU_Class

- Civic
- high impact commercial
- Conservation
- High Density Residential
- Industrial
- Low Density Residential
- Medium Density Residential
- Mobile Home Residential
- low impact Commercial
- Recreational
- recreational commercial
- Regional Scale Commercial
- mixed use residential
- Town Center
- Very Low Density Residential



Gautier Planning Commission

Regular Meeting Agenda

May 1, 2025

Text Change

UDO Amendment

VII. NEW BUSINESS

5. Consider a request to amend the UDO to reflect text changes to Section 4.23.1(B) Loading, hauling and removal of tree limbs and debris (City initiated) (GPC #25-20-UDO)

CITY OF GAUTIER STAFF REPORT

To: Chairman and Members, Planning Commission
From: Scott Ankerson, Planning Director
Date: April 24, 2025
Subject: Consider a request to amend the UDO to reflect text changes to Section 4.23.1(B) Loading, hauling and removal of tree limbs and debris. (City initiated) (GPC #25-20-UDO)

REQUEST:

The Planning Director has requested an amendment to the Unified Development Ordinance (UDO) pursuant to Section 4.20, that would change regulations for removal of tree limbs and debris. (Section 4.23.1(B) Loading, hauling and removal of tree limbs and debris.)

BACKGROUND:

The Planning Director would like to amend the Unified Development Ordinance (UDO) Section 4.23.1(B) to only be applied to sites less than ten acres and extend the removal period of debris to within five (5) days of completion of construction activities.

DISCUSSION:

The Planning Director requests that the UDO Section 4.23.1 (B) reflect the following changes:

4.23.1 Land Alterations and Disturbance Permit

B. Loading, hauling and removal of tree limbs and debris on sites less than ten acres

1. All persons, firms or corporations hereafter performing tree removal or trimming services for compensation within the City shall remove and dispose of all debris created by the performance of such services.
2. The debris shall be properly disposed of by the person, firm or corporation performing the services of their agent. Said debris shall be removed within ~~forty-eight (48) hours~~ **five (5) days** of completion of construction activities.

STAFF FINDINGS:

Staff finds that the Planning Director's request for an amendment to the UDO to amend the regulations for loading, hauling and removal of tree limbs and debris is a relevant amendment.

RECOMMENDATIONS:

Staff recommends that Planning Commission recommend the approval of the UDO amendment as presented.

Planning Commission may:

1. Recommend that City Council approve the UDO Amendment;
2. Recommend that City Council approve the UDO Amendment with changes; or
3. Recommend that City Council deny the UDO Amendment.

ATTACHMENTS:

1. UDO Excerpt with proposed changes

PROPOSED

Section 4.23.1(B)

Section 4.23.1 Land Alterations and Disturbance Permit

4.23.1(B)

B. Loading, hauling and removal of tree limbs and debris **on sites less than ten acres**

1. All persons, firms or corporations hereafter performing tree removal or trimming services for compensation within the City shall remove and dispose of all debris created by the performance of such services.

2. The debris shall be properly disposed of by the person, firm or corporation performing the services of their agent. Said debris shall be removed within ~~forty-eight (48) hours~~ **five (5) days** of completion of construction activities.

- E. Permit for Moving of Buildings
- F. Mobile Home/MEMA Cottage Placement Permit

4.23.1 Land Alterations and Disturbance Permit

The purpose of this section is to set forth regulations governing the excavation, clearing and draining of properties within the City of Gautier. Because the alteration of land, particularly large areas, impacts hydrologic characteristics of most land areas, it is imperative that the activity takes into account the immediate and long-term impact of such work on adjoining and downstream properties. Specifically, the intent of these regulations is to assure that any land alteration results in a zero increase in sedimentation and storm water volumes and rates beyond that which existed prior to alteration or disturbance.

A. Clearing and grubbing, haul roads, waste areas, plant sites or other areas occupied by the contractor.

Clearing and grubbing on erodible areas, including the construction site, or other areas occupied by the contractor in connection with the work shall include adequate protection for preventing excessive erodible material from entering water or waterways on land not occupied by the contractor and preventing dust created by hauling equipment. Temporary measures as required by DEQ and the City shall be employed by the contractor from the beginning of the work. These measures may consist of the expeditious use of brush, vegetation or other residue from clearing and grubbing, temporary or permanent terraces, berms, dikes, dams, sediment basins or other effective means of containing sediment. All temporary or permanent erosion control features shall be maintained in an effective manner so long as essential to the abatement of siltation.

B. Loading, hauling and removal of tree limbs and debris on sites less than ten acres

1. All persons, firms or corporations hereafter performing tree removal or trimming services for compensation within the City shall remove and dispose of all debris created by the performance of such services.
2. The debris shall be properly disposed of by the person, firm or corporation performing the services of their agent. Said debris shall be removed within ~~forty eight (48) hours~~ **five (5) days** of completion of construction activities.

C. Excavation

Excavations shall be made in an acceptable manner to the City Consulting Engineer and shall be left in an aesthetically pleasing condition when completed:

1. A plot plan, drawn to scale, showing dimension of excavation, depth, slopes, distances from other property and entrances and exits shall be submitted.
2. Excavations shall be dug on a 3 to 1 slope.
3. Topsoil from pits shall be dressed down on slopes and grassed to prevent erosion.
4. Bottom of pits shall be graded in a generally level contour.