



**BOARD OF ADJUSTMENT
ORDER OF ITEMS
January 14, 2019**

CALL TO ORDER: 7:00

APPROVAL OF MINUTES: December 10, 2018

OLD BUSINESS

Variance

Application by **Pintail Construction (1537)** for a variance to allow a front setback of less than 40 ft. in accordance with the DeSoto County Zoning Ordinance. Subject property is located at 3535 Anna Dr on the south side of Anna Dr and east of Fossil Hill Dr Parcel #3-07-5-22-03-0-00041-00 in Section 22, Township 3 Range 7 and is zoned R-30. (District 5)

NEW BUSINESS

Variance

Application by **Robert Hamm (1538)** for a variance to allow an accessory building within the designated front yard in accordance with Article X, Paragraph 6, Page 110 of the DeSoto County Zoning Ordinance. Subject property is located at 4822 Getwell Road on the east side of Getwell Road and north of Cleveland Road Parcel #3-07-8-27-00-0-00005-02 Section 27, Township 3 Range 7 and is zoned A (District 5)

Conditional Use

Application by **M&I Properties (1533)** for a Conditional Use to allow gas pumps as an accessory use for a convenience store in accordance with Article VII, Paragraph 1, Section C(4) Page 61 of the DeSoto County Zoning Ordinance. Subject property is located on the west side of Red Banks Road and south of Byhalia Road, Parcel #3-05-3-06-02-0-00001-00 in Section 3, Township 3, Range 5 and is zoned C-1. (District 1)

The DeSoto County Board of Adjustment met at 7:00 p.m. on Monday, January 14, 2019, in the Planning Commission Conference Room of the County Administration Building in Hernando, Mississippi. The following Board members were present: Mike Duncan, Phillip Steward, Tom Williams, Earl Ward and Rudy Davis. Staff members present included Bennie Hopkins, Austin Cardosi, Ashley Hendricks and Sam Barber, Board Attorney.

Board of Adjustment Chairman Mr. Steward called the meeting to order and asked whether any member of the Board recommended changes to the Minutes dated December 10, 2018. Mr. Ward made a Motion to approve the minutes as corrected. Mr. Davis seconded the Motion. The Motion was passed with a unanimous vote.

Ms. Ashley Hendricks explained the meeting process, the provisions for Board approval of a Conditional Use and a Variance under the DeSoto County Zoning Ordinance, and the appeal process. She stated the deadline to file an appeal on items heard at this meeting is January 24, 2019, at 5:00 p.m. She then stated any appeals filed will be heard by the Board of Supervisors on February 19, 2019, at 9:30 a.m.

OLD BUSINESS

Variance

Application by Pintail Construction (1537) for a variance to allow a front setback of less than 40 ft. in accordance with the DeSoto County Zoning Ordinance. Subject property is located at 3535 Anna Dr on the south side of Anna Dr and east of Fossil Hill Dr Parcel #3-07-5-22-03-0-00041-00 in Section 22, Township 3 Range 7 and is zoned R-30. (District 5)

The applicant was not present.

Mr. Steward made a Motion and Mr. Davis seconded the Motion to table the application by Pintail Construction for a variance to allow a front setback of less than 40 feet until the February 11, 2019 meeting. The Motion passed with a unanimous vote.

NEW BUSINESS

Variance

Application by Robert Hamm (1538) for a variance to allow an accessory building within the designated front yard in accordance with Article X, Paragraph 6, Page 110 of the DeSoto County Zoning Ordinance. Subject property is located at 4822 Getwell Road on the east side of Getwell Road and north of Cleveland Road Parcel

#3-07-8-27-00-0-00005-02 Section 27, Township 3 Range 7 and is zoned A (District 5)

Mr. Hopkins presented the application by Robert Hamm for a Variance to allow an accessory building within the designated front yard. Mr. Robert Hamm was present to represent the application.

Mr. Hamm stated that he would like to build the shop at the location presented due to the power lines that run across the property and due to the shape of the property.

Mr. Williams asked if there are two houses on the property. Mr. Hamm stated that the property will be subdivided before the second home is built.

Mr. Steward asked what the building material will be of the accessory building. Mr. Hamm stated that it will be a metal building and a brown color to match the home.

Mr. Duncan asked if either house is built on the property at this time. Mr. Hamm stated that no; he wanted to work out the variance for the accessory building first.

Mr. Williams asked what the accessory building will be used for. Mr. Hamm stated that it will be used for personal storage.

Mr. Steward asked if there was anyone to speak for or against this item. There was no one.

Mr. Williams made a Motion and Mr. Ward seconded the Motion to approve the application by Robert Hamm for a Variance to allow an accessory building within the designated front yard. The Motion passed with a unanimous vote.

Conditional Use

Application by M&I Properties (1533) for a Conditional Use to allow gas pumps as an accessory use for a convenience store in accordance with Article VII, Paragraph 1, Section C(4) Page 61 of the DeSoto County Zoning Ordinance. Subject property is located on the west side of Red Banks Road and south of Byhalia Road, Parcel #3-05-3-06-02-0-00001-00 in Section 3, Township 3, Range 5 and is zoned C-1. (District 1)

Mr. Hopkins presented the application by M&I Properties for a Conditional Use to allow gas pumps as an accessory use for a convenience store. He gave a history of the past applications for this site. Mr. Bill Brown was present to represent the application.

Mr. Bill Brown came forward and stated that this is a different proposal from what was presented a year ago. He then stated that the new proposal will alleviate traffic on to Old Byhalia Road and the waste water will be addressed on the adjacent property with an easement. He stated the adjacent property is an easement for waste water treatment only and will not be used as a parking lot. He stated that the exit onto Old Byhalia Road was

removed to address traffic concerns. Mr. Brown stated the exits will be on to Byhalia Road and Red Banks Road. He then stated easement was required for the waste water treatment to address the septic concerns.

Mr. Duncan asked how stormwater run-off will be addressed. Mr. Brown stated that detention will be on the property.

Mr. Brown stated that whatever standards are required will be adhered to. He then stated that the property has been zone C-1 for a long time and there used to be a store on the property. He stated that they have received documentation from MDEQ stating that there were 2 gas tanks on the property. Mr. Duncan asked if the old gas tanks will be removed. Mr. Brown stated if the tanks are still on the property, they will be removed and replaced with new more modern tanks.

Mr. Brown stated that the location is conducive to commercial and that the Comprehensive Plan calls for the property to be commercial. He stated there has been a change in the neighborhood based on the residential growth in the area, opening of I-269, and opening of the Lewisburg Schools. He stated that with the increased residents in the area it necessitates a need for a convenience store/gas station. Mr. Brown stated that gas pumps are now standard with convenience stores. He stated that the site is near the Red Banks Road exit of I-269 and this gas station would fulfill the need for gas by travelers on I-269. He then stated that commercial rezonings have been approved with gas pumps at other exits along I-269 (i.e. Laughter Road).

Mr. Brown stated that Mr. Ben Smith redesigned the plan to remove the exit on to Old Byhalia Road to address the traffic concerns. He then stated that the site has been designed to capture customers that already travel this area. He then stated h to address the question of does it increase fire hazard, that this type of use is one of the most heavily regulated operation by state and federal agencies. He stated that the site is already approved for a convenience store and could not imagine a convenience store without pumps. He stated that the I-269 Corridor Plan calls for neighborhood commercial in this area.

Mr. Steward asked if of the recent rezoning approvals mentioned are in heavily populated areas like this. Mr. Brown stated he is not sure, but if the areas are not currently heavily populated, they will be.

Mr. Duncan asked if there are any other sites being considered. Mr. Brown stated that the site was purchased a couple of years ago and was zoned and has been zoned commercial for several years. He stated he does not think the buyer was aware gas pumps were a conditional use when the property was purchased.

Mr. Williams stated that the easement area is all wooded. Mr. Brown stated that the site is primarily wooded and some will need to be cleared to accommodate the waste water treatment system.

Mr. Ben Smith stated that the applicant has acquired an easement on the one acre property behind the site, which is more than enough to accommodate the treatment plant and will contain the detention area. He stated they will keep as many trees as possible to have a buffer with the residential properties.

Mr. Duncan asked what type of detention or retention there will be. Mr. Smith stated that the run-off goes to the back of the building, and will be required to not increase the rate of water flow leaving the site above what is currently leaving the site. He stated the detention pond will be behind the store which will go to a 24" pipe under Byhalia Road. He then stated that the site will be curb and gutter that will help keep trash on the site as well.

Mr. Steward asked if there is anyone to speak for or against this item.

Clovis Webster – 12662 Byhalia Road – came forward and has the following concerns:

- Water run-off from the pipe on to his property
- The lot is too small
- Old store was just a small building
- The treatment plant was too big for the lot/easement

Mr. Duncan asked how close I-269 is to the site. Mr. Cardosi stated it is about one mile from the site.

Ira Pearson – 12880 Byhalia Road – came forward and had the following concerns:

- Drainage from the property, he stated the property is filled with 18 feet of fill
- There are two exits off I-269 that do not have red lights this exit and Laughter Road exit
- This will adversely affect the neighborhood

Mr. Smith stated that the site will stay at natural grade or close to it. There was discussion of there being a need to place fill on the lot with the store. Mr. Hopkins explained that will be addressed by the County Engineer during site plan review. He stated this request is strictly for being allowed to add pumps. Mr. Duncan stated he is still concerned with the run-off from the pumps.

Annie Stewart – 12885 Byhalia – came forward and stated that she owns the property that the easement is located on. She then stated that there was convenience store on the property years ago. She stated that she had the work done to install the culvert to help with any drainage concerns. She stated she does not feel it will increase crime and feels that it will increase the property value in the area. She stated she does not feel there is much run-off from the site.

Johnny Watkins – 12763 Byhalia Road- came forward and has the following concerns:

- Water runs off onto his property off of Old Byhalia Road'
- His property is downhill from the site
- Drainage

Mr. Duncan stated that he is concerned with what is in the water that is running off the property.

Kim LeBaron – 12755 Old Byhalia Road – came forward and has the following concerns:

- The Board of Supervisors denied the previous conditional use for gas pumps
- Line of site issues
- Detention and retention pond on the easement
- Environmental concerns with benzene run-off on agricultural land
- Increased traffic
- This is a heavily residential area

Mr. Williams asked if the area is served by a volunteer fire department. Ms. LeBaron stated that it is. Mr. Duncan asked if there is public water in the area. Mr. Smith stated that Lewisburg Water Association can provide water to the site.

Zach Sims – 12690 Byhalia Road- came forward and has the following concerns:

- Drainage
- Contaminants in the run-off
- Increased traffic
- There is no other commercial property in the area
- There are 3 gas stations within 4 miles
- Does not feel it is needed
- It will change the character of neighborhood

Muhammad Rahim came forward and stated that he is the son of the applicant. He then stated that he will be the managing this store if approved. He then stated that there will be run-off whether there are gas pumps on the property. He stated in the years he has been working with gas stations there was only fire and it was not gas pump related. He then stated that they will be replacing the old pumps with new pumps that are better for the environment and community. He stated they could still build a convenience store at the site only asking for gas pumps with this request. He stated he does not sale beer in his stores. He then stated there are strict protocols that have to be followed with gas spills that are required by the state and there are numerous state and federal regulations that have to be followed.

Bill Welch – 12980 Byhalia- came forward and stated that he agrees with the others and is also concerned with gas pumps.

Mr. Brown stated the only issue before the Board of Adjustment tonight is whether the applicant can have gas pumps or not. He then stated that drainage and such is not an issue as part of this application. He then stated that there will always be a need for gasoline and diesel. He then stated that gasoline evaporates quickly and there are automatic cut-offs for large spills. He stated that gasoline facilities are highly regulated as this one will be. Mr. Brown stated that there are or have been in the past gasoline pumps on the site.

Mr. Sam Barber asked the applicant to clarify what will be done in the easement area. Mr. Brown stated that the easement area will only be used for the detention wastewater

treatment system and the buffer. Mr. Webster stated that he is concerned that the lot is too small to accommodate a gas station. Mr. Ben Smith stated that the store and the gas pumps can be accommodated on the lot as shown in the site plan. Mr. Smith stated that water will leave the site at the same rate with or without gas pumps. Ms. LeBaron stated that she understands water run-off, her concern is the possible contaminants in the run-off.

Mr. Duncan made a Motion and Mr. Williams seconded the Motion to deny the application by M&I Properties for a Conditional Use to allow gas pumps as an accessory use for a convenience store based on his knowledge of the area and based on the following:

- a. Granting the conditional use would substantially increase traffic hazards or congestion;
- b. Granting the conditional use would substantially increase natural hazards;
- c. Granting the conditional use would adversely affect the general welfare of the County;
- d. Granting the conditional use would over tax public utilities;
- e. Granting the conditional use would adversely affect the character of the neighborhood; and
- f. Granting the conditional use would be in conflict with the Comprehensive Plan.

The Motion passed with a unanimous vote.

Other

1. Election of Officers

Mr. Davis nominated Mr. Mike Duncan for Chairman, Mr. Earl Ward for Co-Chairman, and Mr. Phillip Steward for Secretary. Mr. Steward seconded the Motion. The Motion was passed with a unanimous vote.

Mr. Davis made the Motion to adjourn the meeting. Mr. Williams seconded the Motion. The Motion was passed with a unanimous vote.