



Commissioner Bice
Commissioner Milton
Commissioner Bower
Commissioner Rubar
Commissioner Hourin
Commissioner Torguson
Commissioner Hector

AGENDA

PLANNING AND ZONING COMMISSION

Tuesday, January 26, 2021

6:00 PM CST

Council Chambers, City Hall
and via teleconference, if necessary

Call to Order

Statement of Purpose

1. May our decisions today be made with wisdom, careful deliberation and in the best interest of the City of Diamondhead. May we display patience and kindness in our dealings with each other and all who are in attendance and may any decisions made today promote the health, safety and welfare of the citizens of Diamondhead and the enhancement of the City as a whole.

Pledge of Allegiance

Roll Call

Confirmation or Adjustments to Agenda

Approval of Minutes

2. Approval of December 8, 2020 Minutes

New Business

3. Elliott Homes, LLC has filed an application requesting a variance from the Zoning Ordinance (Article 9.8 J) to construct a 6' wood privacy fence within 10' of the southwest property along Ieke Drive and extending beyond the front façade of the house 14'.
The property address is 8454 Amoka Drive. The tax parcel number is 068J-1-41-325.000. The legal description is Diamondhead Subdivision Phase #2, Unit 11, Block 7, Lot 4. The property is located in an R-2 zoning district. The fence is required to be set back 20' from the front property line but not any closer than the façade of the house.

Unfinished Business

4. Motion by City Council to return the matter regarding variance request of Margaret Nutkins for Conditional Use Permit to the Planning & Zoning Commission to provide the reason for its denial of the permit.

Open Public Comments to Non-Agenda Items

Commissioners' Comments

Communication / Announcements

5. Next City Council meeting February 3, 2021
Next Planning Commission meeting February 23, 2021

Adjourn or Recess



Commissioner
Commissioner
Commissioner Bower
Commissioner Rubar
Commissioner Hourin
Commissioner Torguson
Commissioner Hector

Item No.2.

MINUTES

PLANNING AND ZONING COMMISSION

Tuesday, December 08, 2020

6:00 PM CST

Council Chambers, City Hall
and via teleconference, if necessary

Call to Order

Chairman Bice called the meeting to order at 6:02 p.m.

Statement of Purpose

1. May our decisions today be made with wisdom, careful deliberation and in the best interest of the City of Diamondhead. May we display patience and kindness in our dealings with each other and all who are in attendance and may any decisions made today promote the health, safety and welfare of the citizens of Diamondhead and the enhancement of the City as a whole.

Commissioner Rubar read the Statement of Purpose

Pledge of Allegiance

Commissioner Torguson led the Pledge of Allegiance

Roll Call

Present: Commissioner Bice, Rubar, Torguson, Layel, Hourin, Bower. Absent: Hector

Also present City Attorney, Derek Cusick, Building Official, Ronald Jones, Building Inspector, Beau King, Code Enforcement Officer, Pat Rich, Minute Clerk, Tammy Braud

Confirmation or Adjustments to Agenda

Commissioner Bower made a motion, second by Commissioner Layel to approve the Agenda as presented.

Motion Carried Unanimously

Approval of Minutes

1. Approval of Minutes of November 10, 2020

Commissioner Rubar made a motion ,second by Commissioner Layel to approve the minutes of November 10.2020

Motion Carried Unanimously

New Business

2. Mr. Ray Sheward and Mr. Scott King have filed an application requesting a variance from the Zoning Ordinance (Article 5.4.2 G) to construct a house within 6.8' from the side yard (south) property line. The case file number is 202000466.

The newly assigned property address is 7420 Turnberry Way . The tax parcel number is 067N-1-35-0-093.000. The legal description is replat of Glen Eagle Phase 1, Lot 174A. The property is

located in a R-1 zoning district. The minimum side yard setback is 10 feet due to this property being a combination lot allowed by the covenants.

Building Official, Ronald Jones addressed and answered questions from the commissioners.

Chairman Bice asked if anyone was present to represent the request.

Mr. Scott King spoke and answered questions from the Commissioners.

Chairman Bice asked for any public comments.

Building Official, Ronald Jones made a recommendation to deny for reasons listed below:

1. No special conditions and circumstances exist which are peculiar of the land, structure or building involved. The lot is basically rectangular in shape. The overall design and area of the proposed house did not take into account for the setbacks. The applicant states that "much time and money has been spent on the plan process". The minimum heating and cooling square feet requirement is 2000 square feet. The proposed house has 2836 with a total of 3910 square feet .
2. Based on the statement of the applicant, no benefit is gained by pushing the structure farther back due to the topography and the wetland delineation. Using the same house plan, a hardship would exist and possibility of changing the foundation to a chain wall rather than slab to grade.

Commissioner Bower made a motion to deny which died due to a lack of second.

Commissioner Hourin made a motion, second by Commissioner Layel to approve the request to the City Council.

Motion Passed

3. Ms. Margaret F. Nutkins has filed an application requesting a Conditional Use Permit in accordance with the Zoning Ordinance Table 4.2, Article 4.21.1 (C) and Article 2.5 to allow short term vacation rental for 30 days or less in a R-1 district. The tax parcel number is 067P-0-35-066.000 The street address is 7604 Fairway Drive. Case file number is 202000481.

Building Official, Ronald Jones, addressed and answered questions from the commissioners.

Chairman Bice asked if anyone was present to represent this case.

Ms. Margaret Nutkins read a statement she prepared and gave a copy to the commissioners, and the building official as the meeting began. She also answered questions from the commissioners.

Chairman Bice asked for any public comments.

Ernie Knoblock, Don Walters, Molley Jimenez, Debra Shae, Lisa Vergano, and C J.Lonanecker all were opposed .

Jaffe Perniciar spoke in favor.

Building Official, Ronald Jones made a recommendation to approve with conditions listed below :

1. No more than five cars can be parked on the premises.

2. Occupancy not to exceed ten people.

3. Additional conditions as required by the Commissioners.

Commissioner Bower, second by Commissioner Torguson made a motion to deny the Condition Use Application.

Motion Carried

Unfinished Business

Open Public Comments to Non-Agenda Items

Commissioners' Comments

None

Communication / Announcements

4. Next City Council meeting December 15, 2020

Next Planning Commission meeting January 26, 2021

Building Official. Ronald Jones informed the commissioners of one possible case for January.

Adjourn or Recess

Commissioner Hourin made a motion, second by Commissioner Torguson to adjourn the meeting at 7:35 p.m.

Motion Carried Unanimously

APPLICATION FOR VARIANCE REQUEST

Case Number: 202000592

Date 11/30/2020

Applicant: Elliott Homes LLC

Applicant's Address: 1402 Pass Rd Gulfport MS 39501

Applicant's Email Address: angela@myelliottthome.com

Applicant's Contact Number: (Home) _____ (Work) _____ (Cell) 228-366-4386

Property Owner: Elliott Homes LLC

Owner's Mailing Address: 1402 Pass Rd Gulfport MS 39501

Owner's Email Address angela@myelliottthome.com

Owner's Contact Number: (Home) _____ (Work) _____ (Cell) 228-366-4386

Tax Roll Parcel Number: 068^J-1-41-325.000

Physical Street Address: 8454 Amoka Dr. Diamondhead MS 39525

Legal Description of Property: Phase 2 Unit 11 Blk 7 Lot 4

Zoning District: R-2

State Purpose of Variance: (Front/Side/Rear/Lot Size/Parking/Building/Coverage)
(Signage-Size-Height) _____

To install 6' wood privacy fence at 8454 Amoka Dr. as drawn and submitted for fence permit.

REQUIRED ITEMS:

- A. A statement describing the variance request and all the reasons why it complies with the criteria for variances provided in Section 2.6.5, specifically:

THE CONDITIONS FOR GRANTING A VARIANCE: (SEE ATTACHED SHEET #4)

1. DO THE SPECIAL CONDITIONS AND/OR CIRCUMSTANCES EXIST WHICH AFFECT ONLY THE LAND OR STRUCTURE IN QUESTION AND NO OTHER SURROUNDING OR SIMILAR PROPERTIES?
2. WOULD LITERAL INTERPRETATION OF THE ZONING ORDINANCE DEPRIVE THE OWNER/APPLICANT OF RIGHTS COMMONLY ENJOYED BY OTHER PROPERTIES IN THE SAME ZONING DISTRICT?
3. ARE THE SPECIAL CONDITIONS OR CIRCUMSTANCES NOT CAUSED BY THE OWNER/APPLICANT?
4. WOULD THE REQUESTED VARIANCE NOT GIVE THE OWNER/APPLICANT ANY SPECIAL PRIVILEGES OR RIGHTS NOT SHARED BY OWNERS OF SIMILAR PROPERTIES?

- B. The property address and the name and mailing address of the owner of each lot within 300 feet of the subject property and a map with parcels keyed to the ownership and address data.

- C. Site plans, preliminary building elevation, preliminary improvement plans, or other maps or drawings, sufficiently dimensioned as required to illustrate the following, to the extent related to their variance application:

- i. Existing and proposed location and arrangement of uses on the site, and on abutting sites within 100 feet.
- ii. Existing and proposed site improvements, buildings, and other structures on the site, and any off-site improvements related to or necessitated by the proposed use. Building elevations shall be sufficient to indicate the general height, bulk, scale, and architectural character.
- iii. Existing and proposed topography, grading, landscaping, and screening, irrigation facilities, and erosion control measures.
- iv. Existing and proposed parking, loading, and traffic and pedestrian circulation features, both on the site and any off-site facilities or improvement related to or necessitated by the proposed use.
- v. The Zoning Administrator may request additional information necessary to enable a complete analysis and evaluation of the variance request, and determination as to whether the circumstances prescribed for the granting of a variance exist.
- vi. A fee established by the City Council shall accompany the application. A single application may include request for variances from more than one regulation applicable to the same site, or for similar variances on two or more adjacent parcels with similar characteristics.

- D. Payment of fee for Variance request: \$100.00 as per Ordinance 2012-020

STATEMENT OF UNDERSTANDING

As the applicant or owner/s for the requested Variance in the City of Diamondhead, I (we) understand the following:

The application fee of \$100.00 must be paid prior to the acceptance of the application. Further, that if the application is withdrawn for any reason that the application fee is forfeited to the City of Diamondhead.

As the applicant or owner/s, I (we), or the designed representative, must be present at the public hearing.

That all information provided with this application is true and correct to the best of my knowledge.

That this application represents only property owned by me (us) and that any other adjoining property owners must apply for a Variance on his own behalf.

That all required attachments have been provided to the City of Diamondhead.

That additional information may be required by the Planning Commission prior to final disposition.

The City Council will not accept new case evidence once the recommendation has been made by the Planning Commission. If new evidence needs to be presented, the applicant will need to request that the matter be referred back to the Planning Commission for review.

The Public Hearing will be held on January 24, 2021 at 6 p.m. in the Council Chambers of the Diamondhead City Hall.

If a continuance of the hearing is necessary at my (our) request, the request must be made to the Zoning Official a minimum of seven (7) days prior to the hearing. If such request is not made in writing, I understand that a new application must be filed and an application fee paid to the City.

If the application is denied by the City Council, a new application for the subject property may not be submitted for one (1) year from the date of denial.

Angela Hayes
Signature of Applicant

Signature of Property Owner

For Official Use Only

- ☒ \$100.00
- ☐ Copy of Deed, Lease or Contract
- ☒ Site Plan
- ☐ Parking Spaces
- ☐ List of Property Owner

- ☐ Application Signed
- ☐ Written Project Description
- ☐ Drainage Plan NA ☐
- ☐ Notarized Statement NA ☐

REQUIRED ITEM AProperty Owner Elliott Homes LLCStreet Address 8454 Amoka Dr.

Statement Describing Variance Request

To install 6' wood privacy fence as drawn and submitted on fencing permit.

The reasons why it complies with the criteria for variances:

1. DO THE SPECIAL CONDITIONS AND/OR CIRCUMSTANCES EXIST WHICH AFFECT ONLY THE LAND OR STRUCTURE IN QUESTION AND NO OTHER SURROUNDING OR SIMILAR PROPERTIES?

Response: The fence will not affect surrounding or similar properties.

2. WOULD LITERAL INTERPRETATION OF THE ZONING ORDINANCE DEPRIVE THE OWNER/APPLICANT OF RIGHTS COMMONLY ENJOYED BY OTHER PROPERTIES IN THE SAME ZONING DISTRICT?

Response: no

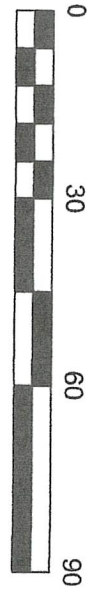
3. ARE THE SPECIAL CONDITIONS OR CIRCUMSTANCES NOT CAUSED BY THE OWNER/APPLICANT?

Response: NO

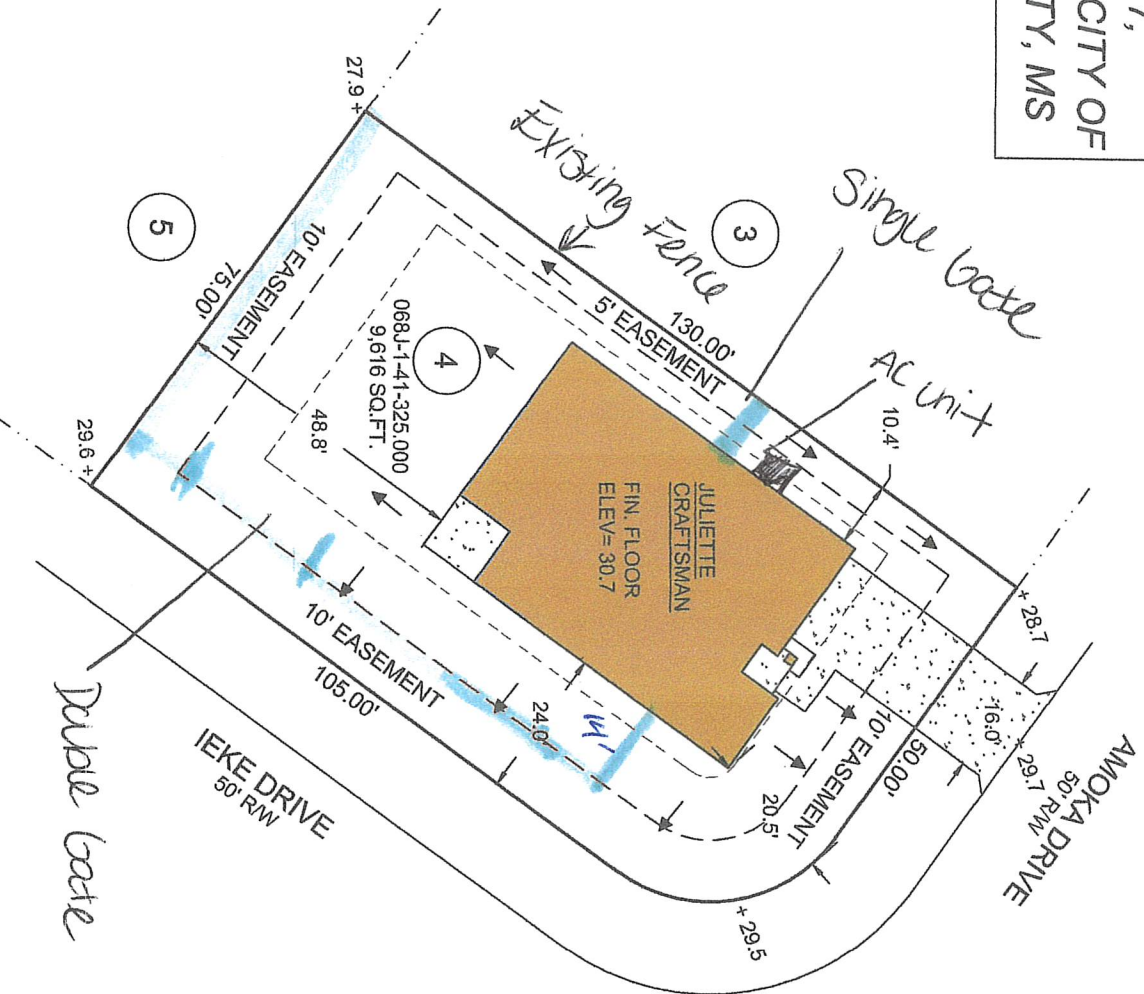
4. WOULD THE REQUESTED VARIANCE NOT GIVE THE OWNER/APPLICANT ANY SPECIAL PRIVILEGES OR RIGHTS NOT SHARED BY OWNERS OF SIMILAR PROPERTIES?

Response: no

**SITE PLAN ON LOT 4, BLOCK 7,
DIAMONDHEAD, PHASE 2, UNIT 11, CITY OF
DIAMONDHEAD, HANCOCK COUNTY, MS**



DRIVEWAY AND LEAD
SIDEWALK= 682.03
SQ.FT.
PERVIOUS SURFACE=
9,635 SQ.FT.



CROSBY SURVEYING

PROFESSIONAL LAND SURVEYING

716 LIVE OAK DRIVE

BILOXI, MISSISSIPPI 39532

PHONE: 228-234-1649

EMAIL: cliffordcrosby@cableone.net

DH21107004



5000 Diamondhead Circle • Diamondhead, MS 39525-3260

Phone: 228.222.4626 Fax: 228-222-4390

www.diamondhead.ms.gov

TO: Elliott Homes, LLC and adjacent property owners

FROM: Ronald R. Jones, Building Official

A handwritten signature in black ink that reads "Ronald R. Jones".

DATE: December 28, 2020

SUBJECT: Notice of Public Hearing

Elliott Homes, LLC has filed an application requesting a variance from the Zoning Ordinance (Article 9.8 J) to construct a 6' wood privacy fence within 10' of the southwest property along Ieke Drive and extending beyond the front façade of the house 14'.

The property address is 8454 Amoka Drive. The tax parcel number is 068J-1-41-325.000. The legal description is Diamondhead Subdivision Phase #2, Unit 11, Block 7, Lot 4. The property is located in an R-2 zoning district. The fence is required to be set back 20' from the front property line but not any closer than the façade of the house.

In accordance with the Comprehensive Zoning Ordinance Article 2.6.4, the Planning Commission may recommend to the Mayor and City Council a variance be granted as the variance was applied for or in a modified form or subject to conditions or the application may be denied. A variance may be revocable, may be granted for a limited time period, or may be granted subject to conditions as the Planning Commission or Mayor and City Council may prescribe.

The Planning and Zoning Commission will consider this application at its next regularly scheduled meeting on **Tuesday, JANUARY 26, 2021 at 6:00 p.m.** The public hearing will be held at Diamondhead City Hall in the Council Chambers at 5000 Diamondhead Circle in Diamondhead, MS 39525. Interested members of the public are invited to attend.

If you have any questions or comments or would like to review the application, you may contact the Building Department at the above address and/or at 228-222-4626.

Prepared By and Return To:
Schwartz, Orgler & Jordan, PLLC
12206 Hwy 49
Gulfport, MS 39503
(228) 832-8550

Indexing Instructions: Lot 4 Block 7
Unit 11 Phase 2

File# 191932A

**STATE OF MISSISSIPPI
COUNTY OF HANCOCK**

WARRANTY DEED

THAT FOR AND IN CONSIDERATION of the sum of Ten and no/100 Dollars (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged,

**Dennis Arceneaux,
1043 Edwin Ladner Road
Pass Christian, MS 39571
(228) 493-2044**

does hereby grant, bargain, sell, convey and warrant, unto

**ELLIOTT HOMES, LLC,
A Mississippi Limited Liability Company
1402 PASS RD.
GULFPORT, MS 39501
228-257-9914**

the following described property, together with the improvements, hereditaments and appurtenances thereunto situated and located in the County of Hancock, State of Mississippi, and more particularly described as follows, to-wit:

Lot Four (4), Block 7, Unit 11, DIAMONDHEAD, Phase 2, according to the map or plat thereof recorded in the Office of the Chancery Clerk of Hancock County, Mississippi.


THIS CONVEYANCE is subject to any and all recorded restrictive covenants, rights-of-way and easements applicable to subject property, and any prior recorded reservations, conveyances and leases of oil, gas and minerals by previous owners of subject property.

Estimated county ad valorem taxes have been prorated between the parties as a part of the consideration for this conveyance. In the event the estimates upon which such proration is based prove to be inaccurate for any reason, the Grantee agrees to refund any excess, and the Grantor

agrees to pay any deficiency, upon receipt of a copy of the tax statement for the current year and a computation of the true amount due, based on a 365 day year.

THIS CONVEYANCE is also subject to Zoning and/or other land use regulations promulgated by federal, state or local governments affecting the use or occupancy of the subject property.

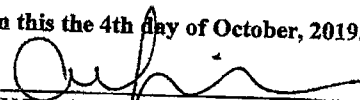
WITNESS THE SIGNATURE of the Grantor on this the 4th day of October, 2019.


Dennis Arceneaux

**STATE OF MISSISSIPPI
COUNTY OF HARRISON**

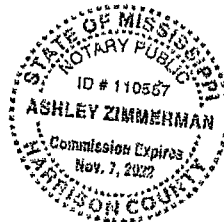
THIS DAY personally appeared before me, the undersigned authority in and for the jurisdiction aforesaid, Dennis Arceneaux, who acknowledged that he signed, executed and delivered the above and foregoing instrument as a voluntary act and deed on the day and year therein mentioned.

GIVEN under my hand and official seal on this the 4th day of October, 2019.


NOTARY PUBLIC

(SEAL)

My Commission Expires:



SOUTHERN EXTERIORS FENCE CO

COMMERCIAL * RESIDENTIAL * INDUSTRIAL * ACCESS CONTROL

31023 Crane Creek Rd.
Perkinston, MS 39573

Office: 228-586-2110
Fax: 228-255-6747

Elliott Hornes

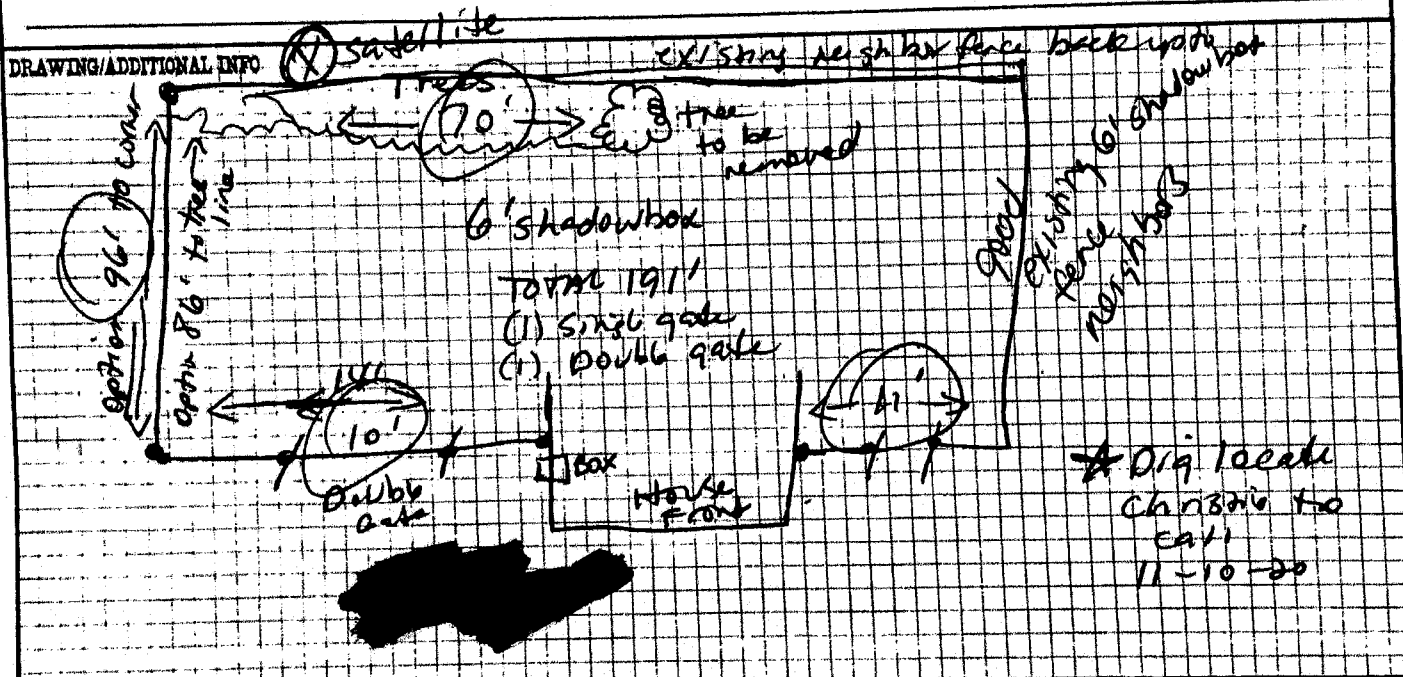
PROPOSAL

Item No.3.

TODAY'S DATE: 11-10-20

NAME: Dawn Underwood -
ADDRESS: 8454 Amoka Dr
Diamondhead, MS
PHONE: 228-366-4386
EMAIL:

We hereby propose to furnish the materials and perform the labor necessary for completion of



- ☐ Fence to be on ground - Buyer will fill in extreme low places. Top rail will follow contour of ground. Buyer initial _____
☐ Top rail to be straight - Fence will be off ground in low places. Buyer will fill in if desired. Buyer initial _____

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of _____ Dollars (\$ _____) with payments to be made as follows.

Any alterations or deviation from above specifications involving extra cost will be executed only upon written order, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control. Respectfully Submitted

Note - This proposal may be withdrawn by us if not accepted within _____ days.

LIMITED WARRANTY

Seller warrants that it will repair or replace any defect resulting from labor or installation of the product sold, of which seller is given notice as hereinafter provided. Seller warrants that it will repair or replace any defective part of the fence sold, which defect arises within one year after installation of the fence sold. At the expiration of the time periods set out above, there are no warranties of merchantability on the product sold hereunder or services rendered in connection with the sale evidenced by this contract. There are no warranties of any kind, express or implied, including implied warranties of merchantability, on wood products sold. No warranties on warping of wood products, including warping of wood gates. INITIAL _____

CONTRACT CONDITIONS

More or less material other than amount contracted for will be debited or credited at current rate acceptable - the above proposal when accepted by the company, at its main office, becomes a contract between two parties and is not subject to cancellation. Silence on the part of the company shall not be construed as an acceptance of this proposal. In case payment is not made as specified, the company reserves the right to repossess all materials used on this job without recourse. Buyer agrees to a charge of 1 1/2 percent per month or 18% annual percentage rate on past due balance and to pay a reasonable fee should it become necessary to refer this contract to an attorney for collection. *Property owner is solely responsible for locating, staking and clearing fence lines. Purchaser also agrees that the company will not be held responsible or liable for any damage of any nature to underground utilities & obstructions. NOTICE: If contract is changed after the erection crew delivers the material there will be a \$15.00 per hour charge for the time lost.

ACCEPTANCE OF PROPOSAL - The above prices, specifications, and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made in full upon completion. DATE: _____ SIGNATURE: _____

FOR OFFICE USE ONLY:

HD PROJECT: Y or N
SUBTOTAL: _____

TAX: _____

TOTAL: _____

SEPCO: _____

HD: _____



5000 Diamondhead Circle

Item No.4.

Diamondhead, MS 39525

Ph: 228-222-4626

FX: 228-222-4390

APPLICATION FOR CONDITIONAL USE

Case Number: 202000481

Date 11-3-2020

Applicant: MARGARET F NUTKINS

Applicant's Address: 7604 FAIRWAY DRIVE DIAMONDHEAD MS 39525

Applicant's Email Address: MARGAR1000@yahoo.com

Applicant's Contact Number: (Home) _____ (Work) _____ (Cell) 407-342-7865

Property Owner: MARGARET F NUTKINS

Owner's Mailing Address: 7604 FAIRWAY DR DIAMONDHEAD MS 39525

Owner's Email Address MARGAR1000@yahoo.com

Owner's Contact Number: (Home) _____ (Work) _____ (Cell) 407-342-7865

Tax Roll Parcel Number: 067P-0-35-066.000

Physical Street Address: 7604 FAIRWAY DRIVE DIAMONDHEAD MS 39525

Legal Description of Property: LOT 6 FAIRWAY ESTATES #1

Zoning District: R-1

State Purpose of Request: VACATION RENTAL

Statement – 7604 Fairway Drive is my primary residence. Upon occasion, I would like the opportunity to rent to vacationers to our City. I am applying for a Conditional Use Variance for such purposes.

E – The Site Plan is attached, which shows the existing structure and the parking availability.

E iv – There will be NO proposed site improvements that include parking and loading areas, pedestrian, and vehicular access, landscaping areas, utility or service areas, fencing and screening and lighting.

E v – The nature of the operation will be to occasionally host guests visiting the Diamondhead community and provide them with quality accommodations and a pleasurable experience.

E vii – The entrance to the two-car garage and the circular driveway can spaciously accommodate 5 full size vehicles.

A – The States of California, Texas and the California Coastal Commission, have all found and upheld appeals that define vacation rentals as a residential use. Therefore, conformance with regulations and standards established by the Zoning Regulations is satisfied.

B – Since this facility is a residential home, it is compatible with existing abutting sites.

C – There are no unfavorable effects or impacts on other residential properties in the area.

D – There are no modifications being done to the property that would be harmful to public health, safety, morals or general welfare.

E – There will be no significant increase of vehicular or pedestrian traffic to the area other than regular residential activity.

F – There will be no need for protection of persons and property from flood or water damage, odors, fire, noise, glare and similar hazards or impacts other than any residential property.

G – There will be no additional lighting, signs or traffic control that will have an adverse affect on my property or adjacent properties.

H – There will be no need for loading facilities and there is ample space for parking for 5 full size automobiles. There will be no need for on street parking.

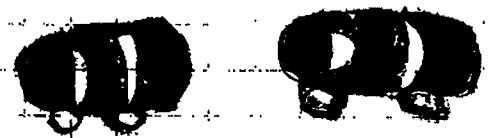
J – The proposed use is for residential use of property for vacation purposes and is harmonious and complimentary to existing and adjacent land use.

I – There will be no changes to the structure of the building, which is compatible with adjacent structures, being residential homes.

K – There should be no further conditions to approve the variance since there are no unfavorable impacts on surrounding areas.

L – Nothing in the conditional use of the property can be determined to be a detriment to the public health, safety or welfare or materially injurious to properties in the vicinity.

**SITE PLAN
7604 FAIRWAY DRIVE**



Margaret F. Nutkins

STATEMENT OF UNDERSTANDING

As the applicant or owner/s for the requested Conditional Use in the City of Diamondhead, I (we) understand the following:

The application fee of \$100.00 must be paid prior to the acceptance of the application. Further, that if the application is withdrawn for any reason that the application fee is forfeited to the City of Diamondhead.

As the applicant or owner/s, I (we), or the designed representative, must be present at the public hearing.

That all information provided with this application is true and correct to the best of my knowledge.

That this application represents only property owned by me (us) and that any other adjoining property owners must apply for a request on his own behalf.

That all required attachments have been provided to the City of Diamondhead.

That additional information may be required by the Planning Commission prior to final disposition.

The City Council will not accept new case evidence once the recommendation has been made by the Planning Commission. If new evidence needs to be presented, the applicant will need to request that the matter be referred to the Planning Commission for review.

The Public Hearing will be held on Dec 8, 2020 at 6 p.m. in the Council Chambers of the Diamondhead City Hall.

If a continuance of the hearing is necessary at my (our) request, the request must be made to the Zoning Official a minimum of seven (7) days prior to the hearing. If such request is not made in writing, I understand that a new application must be filed and an application fee paid to the City.

If the application is denied by the City Council, a new application for the subject property may not be submitted for one (1) year from the date of denial.

Margaret F. Nutkins
Signature of Applicant

Signature of Property Owner

____ For Official Use Only _____

- ☒ \$100.00
- ☒ Copy of Deed, Lease or Contract
- ☐ Site Plan
- ☐ Parking Spaces
- ☐ List of Property Owner

- ☐ Application Signed
- ☐ Written Project Description
- ☐ Drainage Plan NA ()
- ☐ Notarized Statement NA ()

10.21.2020

RESORTS ON THE COAST

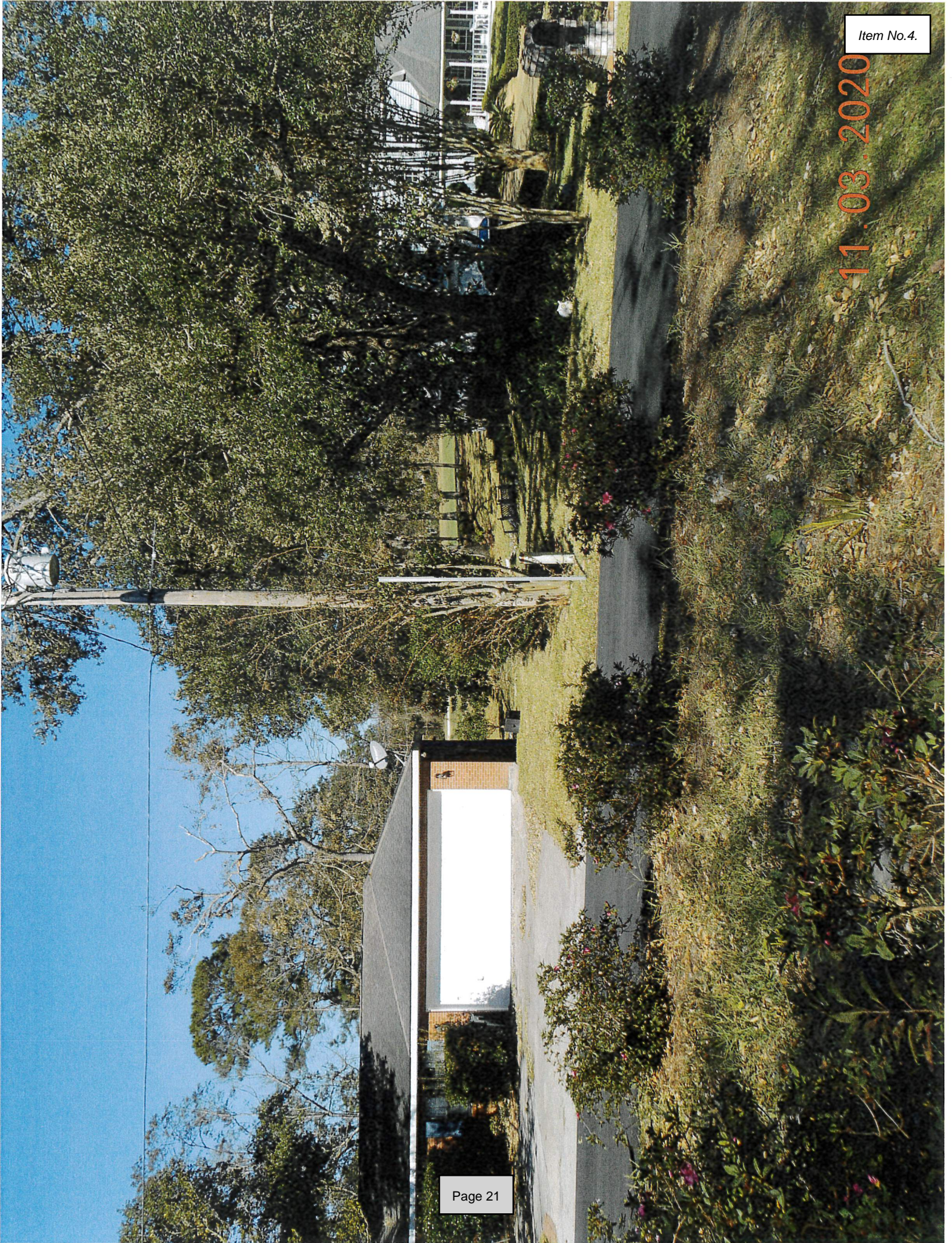
7604



11-03-2020

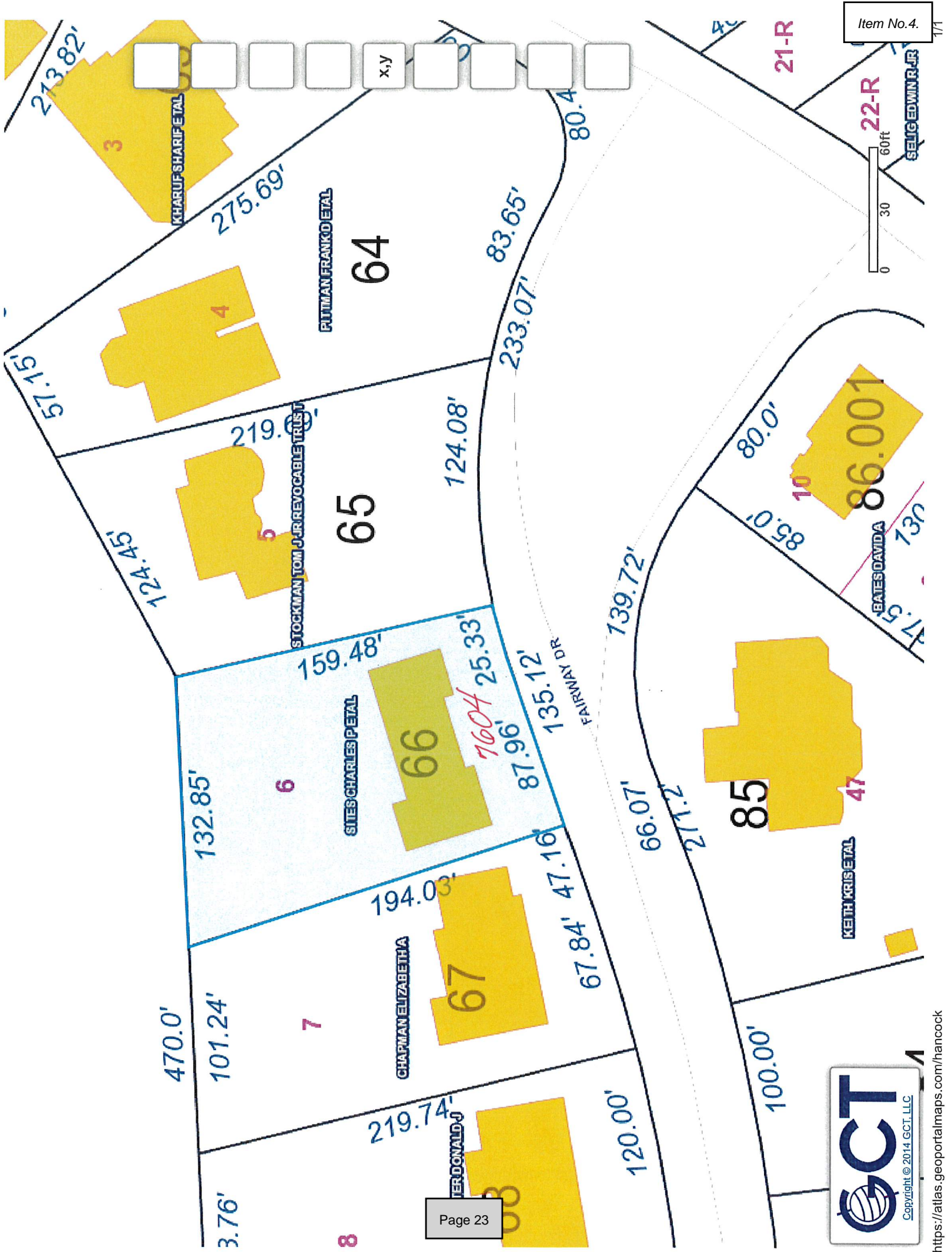


11.03.2020





11.03.2020



To: Ronald R. Jones and Pat Rich, CBO Building Officials

Subject: Request for Conditional Use Permit

First, I would like to thank you for the opportunity to obtain a Conditional Use Permit. Please allow me to share a little bit about me and my perspective on some of the issues that have come up.

I am an Army veteran, a registered nurse, a widowed, sole female proprietor who started a business to give people visiting Diamondhead a quality place to stay. I started my business "Resorts On The Coast" with my first townhouse in Highpoint. Even with the Covid-19 crisis, I found it to be hugely successful and the guests have been wonderful. I have had a variety of people come through such as couples visiting their grandchildren, couples just wanting a get-away together, families who were just interested in the nearby beaches, individuals who have contracts at Stennis and needed a place to stay and numerous guests who have come to golf. The one thing they all had in common when I spoke with them is that they were concerned that it was getting harder and harder to find nice accommodations in Diamondhead. This sparked my interest in being able to offer accommodations for more people who want to visit Diamondhead as a group. I have geared my marketing to Family Reunions, Off Campus Business Meetings, and golf groups coming for tournaments. I wanted a place where they could golf, relax, cook and eat together.

Mr. Donald Walter presented a petition to the neighbors and I have no idea how it was presented or what he told them. He certainly did not present it to me to give me the opportunity to vote no. So, I would like to speak to the most common objections of having a vacation rental in your neighborhood.

Mr. Walter describes the access to Fairway Estates. He states that short term rentals reduce the safety and convenience of vehicular and pedestrian circulation in the vicinity and that it generates additional traffic that presents a potentially dangerous traffic situation in front of 7604 near a blind section of Fairway Dr. The entrance is engineered for two directional traffic, separated by an island which creates a safety barrier. Regardless of how the entrance is described, it has no bearing on my situation. Apparently, Mr. Walter has no idea what a vacation rental is. This is not a retail store generating tons of traffic coming and going. The property has ample parking for 6 cars so there will never be any reason to park on the street. The vacation rental will not bring in any more traffic than if Mr. Walter had family come visit once-a-month. This is my home, and these are my guests. Vacation rentals do not generate pedestrian or vehicular traffic beyond that is reasonably expected to be generated by a residential unit. I have consulted with Leigh Simpson & Associates, a national company, who states traffic safety in front of 7604 Fairway is the least of this City's worries. No intersection in this City is busier than Aloha Drive and Gex Drive. There are double yellow lines on Aloha Drive, yet traffic can turn left into Burger King crossing 2 lanes. At the very least there should be some type of barrier preventing left turn. People can enter Burger

King on Gex Drive and also with a right-hand turn from Aloha Drive. Traffic safety definition lines to prevent head on collisions or accidents are not visible on the streets with the exception of one area of Golf Club Drive. Areas in the City need safety barriers to prevent vehicles from driving off the road and into the ditches. One example is on Alakoko Place where the ditch is not maintained because of its depth, which is at least 5-foot-deep on a curve.

Mr. Walter points out R-1 "Purpose" stating that short term rentals allow use of this property which does not perform a function appropriate to the Fairway Estates residential environment. Running a vacation rental out of one's home is no different than selling Amway or Avon from home or babysitting in the home. Since Covid-19 there are more businesses than ever running from homes. Furthermore, I am not conducting any business in the home at all. All business transactions are done on the internet. This is nothing more than a home occupation. In the February 28, 2019 version of the Code of Ordinances. Part II, Appendix A, Article 4.18 B states that home occupations are allowed within the City of Diamondhead subject to securing a permit from the zoning administrator.

The Supreme Courts of Texas, in Tarr v Timberwood ruled that occupants to whom Tarr rented to, used the home for a 'residential purpose' no matter how short-lived.

Washington Supreme Court, Wilkinson v Chiwawa Communities Association, ruled that if a vacation renter uses a home for the purposes of eating, sleeping and other residential purposes, this use is residential, not commercial, no matter how short the rental duration. It also stated that the owner's receipt of rental income whether on short or long-term rentals in no way detracts or changes the residential characteristics of the use by the tenant. Nor does the payment of business and occupational taxes or lodging taxes detract from the residential character of such use to make the use commercial in character.

Again, a third ruling, in Florida's First District Court of Appeals in Santa Monica Beach POA v Acord, ruled in favor of the owner because the uses of the tenant were for residential use and not commercial. So, as you can see courts in Florida, Texas, and California, as well as the California Coastal Commission, have found and upheld appeals that define vacation rentals as a residential use, rather than a commercial one.

While a hotel is a hotel today and will be the same hotel tomorrow, a vacation rental could be occupied by resident owners this week, short-term renters over a holiday weekend, and then go back to being a full-time residence again. Vacation rentals are without question, a residential use, and enjoy this flexibility under the law. Attempts to commercialize or redefine vacation rentals as hotels are tantamount to a ban or severely limiting action by states and municipalities because commercialization could ultimately wipe out this activity due to zoning restrictions like yours in Diamondhead. It might also make other owners susceptible to infrastructure changes such as fire and safety upgrades, ADA requirements, and health inspections. Because vacation rentals are a residential use, the implementation of Page 25 special requirements effectively changes the nature of the structure and would act as a deterrent to those looking to

offer their homes as a vacation rental accommodation for travelers. The City of Diamondhead is going to need to address this zoning restriction regardless of my asking for a variance. With that said, allowing vacation rentals in the R1 areas is no different than allowing them in the condominium complexes. There are full time residents in Highpoint as well as vacation rentals and long-term rentals. In fact, my neighbor, Mike Turner, is a full time resident and has had no concerns or complaints regarding my visitors. Having a vacation rental on Fairway Drive is no different than having one on Highpoint Drive.

Mr. Walter's first bullet point – that short term rentals in Fairway Estates would detract from the basic elements of this well balanced and attractive residential area. I have spent a quarter of a million dollars to make this happen at my Fairway property. It is a beautiful property that I am very proud of. I would be happy for each of you to visit the AIRbnb or VRBO website to view my property for yourselves. I have single handedly cleaned the yard after 2 hurricanes to include the area of the golf course all the way to the cart path. I have painted shutters and updated the interior of my home. Whether or not my home is my full-time residence, or a vacation rental does not change the attractiveness of my home. I have improved this property extremely from its dilapidated condition and I have only had it for 3 months. If Mr. Walter thinks that my residence detracts from the attractiveness of the neighborhood, then why did he not take it up with the previous owner?

Bullet point # 2 is that Mr. Walter thinks that a vacation rental will have a negative effect on property values. Craig Kalkut, vice president of government affairs at the American Hotel & Lodging Association states that a home with "rentable" features might sell for more money according to some realtors. He also said there is evidence that vacation home sales are going up because these sorts of platforms have become a more common way to book a vacation. There is not a lot of data regarding this argument but all you have to do is ask a local realtor what impact a "mother-in-law suite" or a "pool house" has on the value of a home and they will tell you that the value is increased because of the rental potential.

Vacation rentals can bring a positive economic impact to a city or county in several ways. For example, they can provide a city with an additional income through tax revenues. At the same time vacation rental guests can benefit the community in the terms of economic infusion because guests will spend their money in other visitor related amenities such as restaurants, bars and golf courses. This provides the tax revenue to operate this city. Additionally, it can help residents make ends meet or enable young families to go on a holiday while retirees stay in their home. Many cities are approving vacation rentals in the hope to attract tourists as they currently lack good lodging as is the case in Diamondhead.

Another argument is that many people think that vacation rentals are just party houses that create noise. Noise and parties were one of the reasons that I opted to use the house as a vacation rental instead of looking for a long-term tenant. I felt short-term guests would create less wear and tear and that I would have more control over who

was in the house. Platforms like AirBnB, VRBO and Home Away include rating systems that evaluate both guests and hosts. Hosts can set rules prohibiting parties and specifying parking rules. My rental has ample parking for 6 automobiles and there will not be parking on the street. Hosts who get loud or unruly guests can turn to the rental platforms for recourse; in dire cases, guests may be asked to leave the property. However, there is ample motivation for guests to be on their best behavior because they know hosts will rate them following their stay. Conversely, living next to a loud long-term renter can be a big problem, and it can take more than a year to evict an un-neighborly tenant. In addition, the City of Diamondhead has a noise ordinance so my guest will be under even more supervision. Since I have been doing business, I have not had one complaint regarding my properties or guests.

Another argument is that some people think that living next to a vacation rental is like living next to a vacant house. The argument here is the lack of a consistent neighbor who is in the house every day. Most short-term guests stay over the weekend, so when a house is rented Thursday through Sunday each week, it is vacant Monday through Wednesday. The argument that the house is unoccupied half the time doesn't hold water for several reasons.

First, a vacation rental looks nothing like a vacant house. Vacant houses have peeling paint, overgrown yards. Vacant homes do not contribute to the neighborhood for example the home next to Patty Willis. That home has been vacant for years, is unsightly and is even a hazard due to a swimming pool. I could point out a few more Diamondhead houses that do not contribute to the neighborhood. My property has a maintained yard, new paint, clean windows. On the days it is unoccupied, I am cleaning and doing maintenance. I keep my properties in top condition because I want good ratings from my guests.

Second, the vacant-house argument reaches into the realm of trying to control how neighbors use their home. If the house was occupied by a long-term renter or owner who travels three days a week for a job, neighbors could not possibly expect the City to entertain complaints about the house being vacant.

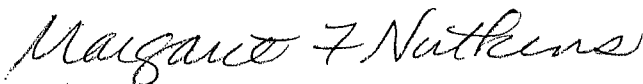
I had put a sign on my mailbox. This is my residence and I do receive mail for Resorts On The Coast at this mailbox. I understand how that can be interpreted as advertising, so I have removed the sign. I was happy that I put the sign up as I have been up front about what I am trying to accomplish. I am not hiding anything from anyone.

In closing, I want to be among other people across the City operating short-term rentals that are not within the condominium complexes. At the time of this writing, there were at least 9 on the same websites as mine. Some were whole house rentals; some were private rooms for rent and one had a guest suite for rent. All I know is that we are all renting with care and thought. I am sensitive to my neighbor's concerns and I care about the neighborhood my home is in. I am asking for a variance but want you to know that this ordinance could prove costly for vacation rental owners and seemingly aims to force regular folks like me out. This Page 27 have those out-of-town corporate hosts without local competition. Local hosts like me spend their money in

Diamondhead and we always recommend local businesses to our guests. If we are all driven away that will only leave corporations and money that does not go back into Diamondhead. As a vacation rental host and neighborhood advocate, I would like to see locals – not out of town corporations – flourish within neighborhoods and Diamondhead as a whole.

I would like to say that the granting of the proposed Conditional Use Variance will not be detrimental to the public health, safety and general welfare. It will not adversely affect the established character and planned character of the surrounding vicinity. It will not be injurious to the uses, planned uses, property, or improvements adjacent to, and in the vicinity of the home. The granting of the Variance is consistent and compatible with the intent of the goals, objectives and policies of the City's Comprehensive Plan. All conditions necessary to lessen any impacts of the proposed use are conditions that can be monitored and enforced. The use will not introduce hazardous conditions at the site and there will be no public health, safety or community endangerment.

Please take into consideration my thoughts and concerns for a growing City of Diamondhead and a growing business called "Resorts On The Coast". Thank you.



Margaret F Nutkins

December 8, 2020

CC: Leigh Simpson & Associates

Ronald Jones

From: Donald Walter <dwalter1126@cableone.net>
Sent: Sunday, November 29, 2020 3:20 PM
To: Ronald Jones; Pat Rich
Subject: FAIRWAY ESTATES REQUEST TO DENY CONDITIONAL USE PERMIT AT 7604 FAIRWAY DRIVE
Attachments: Fairway_Dr_7604.pptx; Fairway_Petition_to_deny_7604_Signed_Nov2020.pdf

Mr. Jones and Mr. Rich:

As suggested by Mr. Jones and discussed with Mr. Rich, I am submitting the attached files for distribution to the Planning and Zoning (P & Z) Board Members prior to the scheduled P & Z public meeting scheduled for December 8, 2020 at 6 P.M.

The files provided include:

- 1) a petition signed by the owners of 40 of the 42 properties within the Fairway Estates community. All 40 owners request the denial of a conditional use permit applied for by the current owner(s) of 7604 Fairway Dr.
- 2) a power point file that presents geographic and background information for consideration by the P & Z Board and the City of Diamondhead relative to the Request for Conditional Use specifically in Fairway Estates.

I plan to bring the Petition with original signatures to your office on Monday morning (November 30) along with the additional documentation attached herein.

Please provide a formal response to this email to acknowledge receipt of the attached paperwork.

Thank you.

Respectfully,

Donald J. Walter
7608 Fairway Dr.
Diamondhead, MS 39525

A petition by Fairway Estates Property Owners to Diamondhead Planning and Zoning Commission

We, the property owners listed and signed below, hereby request that the Planning and Zoning Commission **DENY** the request for Conditional Use to allow short term vacation rentals for less than 30 days at 7604 Fairway Dr. (Tax Parcel Number 067P-0-35-066.000) as submitted by Ms. Margaret F. Nutkins.

Property Address	Property Owner(s) Name (Printed)	Owner(s) Signature
7600 Fairway Dr.	Frank Pittman	Frank Pittman
7601 Fairway Dr.		
7602 Fairway Dr.	Tom Stockman	Tom Stockman
7603 Fairway Dr.	Vincent Handy	Vincent Handy
7604 Fairway Dr.	Applicant for Conditional Use Permit	
7605 Fairway Dr.	Janie Kingston	Janie Kingston
7606 Fairway Dr.	Elizabeth Chapman	Elizabeth Chapman
7607 Fairway Dr.	CASEY BEARSS	Casey Bearss
7608 Fairway Dr.	Donald J. Walter	Don Walter
7609 Fairway Dr.	STEPHANIE HARDESTY	Stephanie Hardesty
7610 Fairway Dr.	EUGENE KELLY	Eugene Kelly
7611 Fairway Dr.	CAROL LILLEY	Carol Lilley
7612 Fairway Dr.	Elizabeth Gallinghouse	E. Gallinghouse
7613 Fairway Dr.	Uwe H. Seitz	Uwe H. Seitz
7614 Fairway Dr.	CLIFFORD Satterlee	Clifford Satterlee
7615 Fairway Dr.	Scott + Betsy Lyons	Betsy Lyons
7616 Fairway Dr.	ROBERT SAAX	Robert Saax
7617 Fairway Dr.	Wendy Borschke	Wendy Borschke
7618 Fairway Dr.	Jeffery W. Wair	Jeff W. Wair
7619 Fairway Dr.	DONA DECKER	Dona Decker
7620 Fairway Dr.	LISA VERGANO	Lisa N. Vergano
7621 Fairway Dr.	Dena Burleson	Dena Burleson
7622 Fairway Dr.	Richard Armstrong	Richard Armstrong

A petition by Fairway Estates Property Owners to Diamondhead Planning and Zoning Commission	We, the property owners listed and signed below, hereby request that the Planning and Zoning Commission DENY the request for Conditional Use to allow short term vacation rentals for less than 30 days at 7604 Fairway Dr. (Tax Parcel Number 067P-0-35-066.000) as submitted by Ms. Margaret F. Nutkins.	
	Print	Signature
7623 Fairway Dr.	JERRY PHILLIPS	Jerry Phillips
7624 Fairway Dr.	JOSEPH BROCKHOFF	Joseph Brockhoff
7625 Fairway Dr.	PATRICK J. MCKINLEY	Patrick McKinley
7626 Fairway Dr.	Theodore Parish	Theodore Parish
7627 Fairway Dr.	FOR SALE / REMAX / Ritten	
7628 Fairway Dr.	ELAINE WILLIAMS	Elaine Williams
7629 Fairway Dr.	DAVID BOSLEY	David Bosley
7630 Fairway Dr.	WILLIAM LEE	William Lee
7632 Fairway Dr.	D.R. YOUNG	D.R. Young
7634 Fairway Dr.	C. J. LONGANECKER	C. J. Longanecker
7635 Fairway Dr.	Leased by ALFONSO	Alfonso
7636 Fairway Dr.	ROBERTO SANCHEZ	Roberto Sanchez
7638 Fairway Dr.	BARBARA LINVILLE	Barbara Linnville
7640 Fairway Dr.	Brant S. Maillho	Brant S. Maillho
7642 Fairway Dr.	THOMPSON, John	Thompson, John
7631 Tahiti Circle	Donald Credeur	Donald Credeur
7632 Tahiti Circle	Maureen Oriol / Harold Oriol	Maureen Oriol / Harold Oriol
7634 Tahiti Circle	DAVID L. RYAN / Walterman	David L. Ryan / Walterman
7636 Tahiti Circle	Richard Tandy	Richard Tandy

Fairway Estates Response to the request for a Conditional Use Permit at 7604 Fairway Dr.

Fairway Estates property owners have signed a petition requesting that the Diamondhead Planning & Zoning Board **DENY** the application for short term vacation rentals for less than 30 days at 7604 Fairway Dr. in Fairway Estates

- Fairway Estates is an R-1 sub-community of Diamondhead that consists of 42 individual single family home sites on Fairway Drive and Tahiti Circle
- Access into Fairway Estates is provided via a one way entry onto Fairway Drive from Golf Club Drive with a separate one way exit out of Fairway Dr. onto Golf Club Dr.


R1 - "Purpose" (From Code of Ordinances – City of Diamondhead. MS)

"This is the **most restrictive district** and least densely populated of the residential districts. The principal use of land is for single-living unit dwellings situated upon larger lots along with related recreational, religious, and educational facilities normally required to provide the basic elements of a balanced and attractive residential area. **These areas are intended to be defined and protected from the encroachment of uses not performing a function appropriate to the residential environment.**"

Approval for short term rentals in Fairway Estates would;

- detract from the basic elements of this well balanced and attractive residential area
- have a negative affect on property values in this area
- reduce the safety and convenience of vehicular and pedestrian circulation in the vicinity
- generate additional traffic that presents a potentially dangerous traffic situation in front of 7604 Fairway near a blind section of Fairway Dr.
- allow use of this property which does **not perform a function appropriate to the Fairway Estates residential environment**
- allow use of a confined entry area for operation of a business

Travel safe: Be sure to follow any government safety guidelines for travel. Visit our help article



Where

Diamondhead, Mississippi, United ...

Check In

12/18/20

Check Out

12/25/20

Guests

3

Filters

Free Cancellation

Price

Rooms & spaces

Trip Boards

Login

Sign up

Help


Feedback

USD (\$)

EN

List your Property

Here is your property with others nearby



Save

Free cancellation until Dec 4

Family Reunions and Golf Trips

house · 4 BR · 2 BA · 1 HF B · Sleeps 10 · 2600 Sq. Ft.

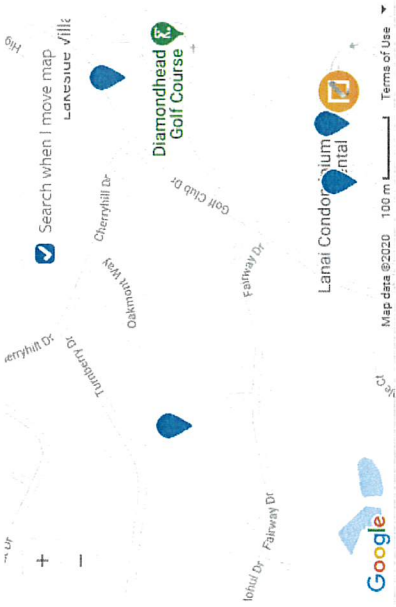
New listing · 20% off

4 \$272 /night

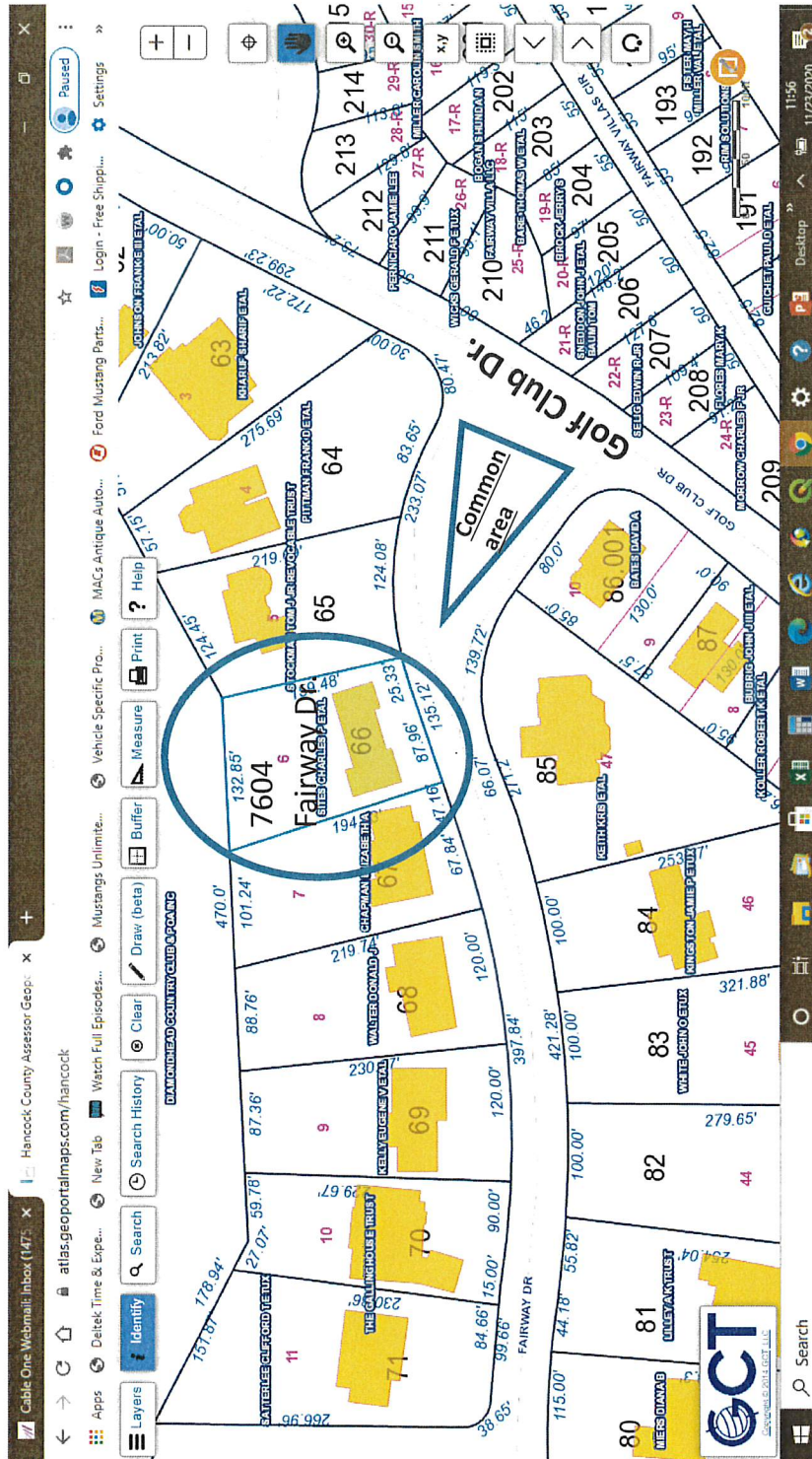
\$2,405 total

Total includes taxes and fees

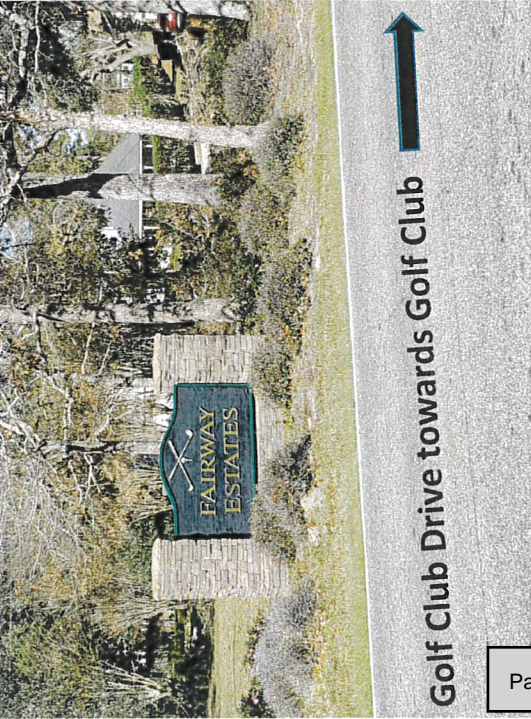
Search when I move map



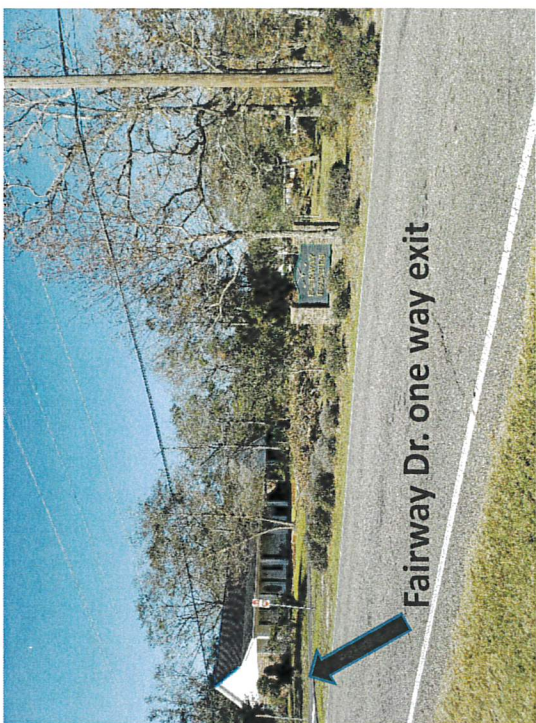
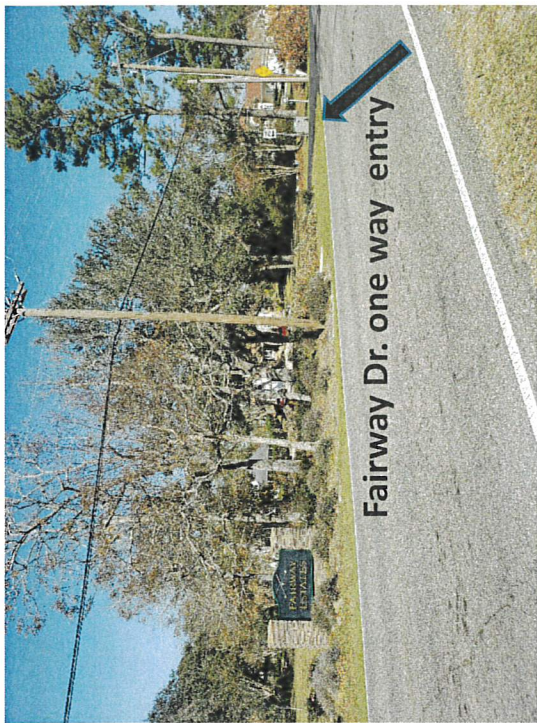
Page 35



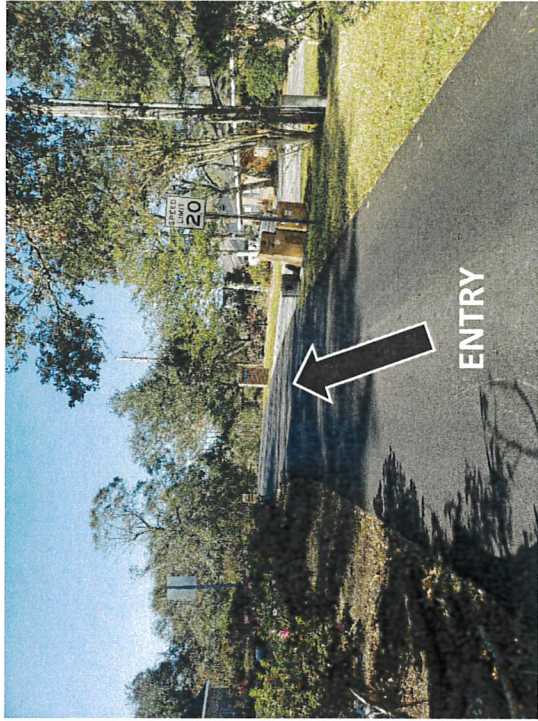
Location of 7604 Fairway Dr. (ref. Hancock County Geoportal) in Fairway Estates and triangular common area at entry/exit onto Golf Clu Dr..
R1 Residential Community - Covenants expire September 7, 2028.



Entry into and exit
from Fairway
Estates from Golf
Club Drive



Location of 7604
Fairway Dr. at
entry/exit
convergence with
common
triangular area
maintained by
City;
*Business
advertising on
mailbox





5000 Diamondhead Circle, Diamondhead, MS 39525

Phone: (228) 222.4626

FAX: (228) 222-4390

www.diamondhead.ms.gov

STAFF REPORT TO PLANNING COMMISSION

DATE: December 8, 2020

CASE FILE NUMBER: 202000481

APPLICANT: Margaret Nutkins

PROPERTY OWNER: same as

applicant

TAX PARCEL NUMBER: 067P-0-35-066.000

PHYSICAL STREET ADDRESS: 7604 Fairway Drive

LEGAL DESCRIPTION: Fairway Estates, Lot 6

ZONING DISTRICT: R-1

TYPE OF APPLICATION: Conditional Use Permit

NATURE OF REQUEST: Ms. Margaret F. Nutkins has filed an application requesting a Conditional Use Permit in accordance with the Zoning Ordinance Table 4.2, Article 4.21.1 (C) and Article 2.5 to allow short term vacation rental for 30 days or less in a R-1 district. The tax parcel number is 067P-0-35-066.000 The street address is 7604 Fairway Drive. Case file number is 202000481.

DATE OF PUBLIC HEARING BEFORE PLANNING COMMISSION: December 8, 2020

ACTION BY THE PLANNING COMMISSION: In accordance with the Comprehensive Zoning Ordinance Article 2.5.5, the Commission may recommend approval of a Conditional Use Permit as the permit was applied for or in a modified form or subject to conditions, or may recommend denial of the application.

FINDINGS: The Zoning Administrator and the Commission shall review and evaluate and make the following findings before recommending approval of a Conditional Use Permit application using the following criteria:

- A. Conformance with applicable regulations and standards established by the Zoning Regulations.
- B. Compatibility with existing or permitted uses on abutting sites, in terms of building height, bulk and scale, setbacks and open spaces, landscaping and site development, and access and circulation features.
- C. Potentially unfavorable effects or impacts on other existing or permitted uses on abutting sites, to the extent such impacts exceed those which reasonably may result from use of the site by a permitted use.
- D. Modifications to the site or proposed use would result in increased compatibility, or would mitigate potentially unfavorable impacts, or be necessary to conform to applicable regulation and standards and to protect the public health, safety, morals, and general welfare.

- E. Safety and convenience of vehicular and pedestrian circulation in the vicinity, including traffic reasonably expected to be generated by the proposed use and other uses reasonably anticipated in the area; existing zoning and land uses in the area.
- F. Protection of persons and property from flood or water damage, odors, fire, noise, glare, and similar hazards or impacts.
- G. Location, lighting, and type of signs; and relation of signs to traffic control and adverse effect on adjacent properties.
- H. Adequacy and convenience of off-street parking and loading facilities.
- I. That the proposed use is in accordance with the objectives of this Zoning Ordinance and the purposes of the district in which the site is located.
- J. That the proposed use and site development, together with any modifications applicable thereto, will be compatible with existing or permitted uses and structures in the vicinity, in accordance with the following standards:
 - i. The proposed use will be located within the district so as to be harmonious with and complimentary to adjacent and existing land uses.
 - ii. The structure resulting from the granting of a conditional use will be architecturally compatible with other existing or proposed structures in the neighborhood in which it is to be located. For the purpose of this criterion, the term "neighborhood" shall mean an area extending 750 feet in all directions from the lot line of the proposed structure.
 - iii. For the purposes of determining architectural compatibility, consideration shall be given to: building mass and style; roof types, pitch and material; façade treatment and materials; window and door styles; eaves and porches; trim; gables and dormers; gutters; chimneys; walls, fences, hedges and other landscape elements; colors; driveway material; signage; dimensional setbacks and building orientation on the lot; and other such features as may be appropriately considered by the Planning Commission.
 - iv. For the purpose of assessing the architectural compatibility, existing structures which may not be an architectural asset to the neighborhood shall not be considered in determining the appropriateness of a conditional use application.
- K. That any conditions applicable to approval are the minimum necessary to minimize potentially unfavorable impacts on nearby uses and to ensure compatibility of the proposed use with existing or permitted uses in the same district and the surrounding area.
- L. That the proposed use, together with the conditions applicable thereto, will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.

RECOMMENDATION TO PLANNING COMMISSION: To **grant** the Conditional Use Permit with the following conditions:

- 1. No more than five cars can be parked on the premises.
- 2. Occupancy not to exceed ten people.
- 3. Additional conditions as required by the Commission.