

**MINUTES FOR THE CITY OF OLIVE BRANCH BOARD OF ZONING ADJUSTMENT
REGULAR MEETING ON MARCH 9, 2023**

The City of Olive Branch Board of Adjustment meeting was held on Thursday, March 9, 2023, in the Olive Branch Municipal Court Room, located at 6900 Highland Street, at 6:00 p.m.

CALL TO ORDER

The meeting was called to order by Ted Roman, Chairman at 6:00pm.

ROLL CALL

The roll was called with Angela Cook, William Gray, Ted Roman, Aretha Wiseman, Jessica Cowan, Carl Williams and Jeff Edler present, and a quorum was established. Jason Gambone, Director, Venard Asongayi, Assistant Director, Brad Thomas, Associate Planner, and Heather James, Planning Technician were present from the Planning and Development Department

THE APPEAL PROCESS

Mr. Roman announced the Appeal Process.

APPROVAL OF THE MINUTES OF THE REGULAR MEETING OF FEBRUARY 9, 2023

Mr. Roman asked if anyone had any questions, comments or motions regarding the minutes of the February 9, 2023 meeting and there were none. **Ms. Wiseman made a motion to approve the minutes as submitted and was seconded by Mr. Gray with approval as follows:**

**Jessica Cowan – Yes William Gray – Yes Aretha Wiseman – Yes
Ted Roman – Yes Angela Cook – Yes Jeff Edler – Yes Carl Williams – Yes**

OLD BUSINESS

1. Application for a Conditional Use Permit submitted by Tom Lyons, Farmers Business Network, on behalf of MDH Partners, property owner. The request is to allow the processing and storage of chemicals, more specifically, the installation of a “herbicide dilution system” at this facility. The 9.2+/- acre subject property is zoned M-2, Heavy Industrial District, and is located on the north side of Marina Dr, west of Hacks Cross Rd, known as 10630 Marina Dr. (File # CU23-0003). (Tabled to this date at meeting on February 9, 2023).

Mr. Roman announced Old Business item number 1 and asked for the staff report. Mr. Gambone shared the following: **UPDATED INFORMATION:** At the February 9, 2023 meeting - upon finding that additional information was needed to make a determination of adherence to Conditional Use Permit (CUP) criteria addressing public health and safety and the need for hazard mitigation - the Board of Adjustment unanimously (6-0) passed a motion to table the application until such time the following items were addressed:

- 1) *Applicant provides a commodity assessment to the City’s Fire Department as to the adequacy of the sprinkler system for the product.*
- 2) *Applicant provides evidence to the City’s Fire Department that the proposed containment system is adequate to handle the runoff of any fire suppression system.*
- 3) *Pre-approval of discharge permit modification by MDEQ and DCRUA.*
- 4) *Applicant agrees to pay or cover the City’s expense to hire a 3rd party to review building construction plans for the herbicide dilution unit.*
- 5) *3rd party review of the building construction plans for the herbicide dilution unit contemplated under No. 4 are substantially complete.*

In response, Applicant Farmers Business Network (FBN) and their engineering consultant (BSI) provided a “Spill Containment & Fire Protection Design Intent Summary” Report (*Exhibit 4*) on

March 2, 2023. As of the date this staff report is being written, the FBN/BSI report is being reviewed by Fire Chief Eason to determine whether it adequately addresses Condition Nos. 1 & 2. The City has also contacted a professional building code consultant to determine whether the proposed method of containment meets requirements of the International Building Code (IBC) as contemplated in Condition Nos. 4 & 5.

EXECUTIVE SUMMARY: This application requests a Conditional Use Permit (CUP) for a 10 year term to allow the processing and storage of chemicals. Proposed is the installation of a “herbicide dilution system” within an existing 127,000 sq. ft. industrial building located on the north side of Mariana Dr. approximately ¼ mile west of Hacks Cross Rd. The primary chemical being used is already stored on site in its diluted form. Although not a fire or explosive hazard, Fire Chief Eason has noted the product is classified as a “corrosive” and extremely harmful to the environment if it were to break containment. **RECOMMENDED MOTION (If reviews are completed by the March 9, 2023 meeting date to the satisfaction of the Board of Adjustment):** Finding that the request meets the 6 criteria, approve a Conditional Use Permit (CUP) to allow the processing and storage of chemicals, more specifically, the installation of a “herbicide dilution system” at 10630 Marina Dr., subject to the following conditions:

- 1) Conditional Use approval is for 10 years (expiring March 9, 2033) per request of applicant.
- 2) Application for building permit shall require approval from City’s Building and Fire Departments. Pursuant to obtaining required building permits, all inspections shall be completed prior to activation of the herbicide dilution unit.
- 3) Applicant shall maintain compliance with applicable City codes and ordinances, including Fire Department inspections. Failure to maintain compliance could result in Board of Adjustment revocation of the CUP.

ALTERNATIVE MOTION (If reviews are not completed by the March 9, 2023 meeting date to the satisfaction of the Board of Adjustment): Table the item to the April 13, 2023 meeting.

Mr. Gambone provided the updates from both Chief Eason with Olive Branch Fire Department and Terry Hughes with Code Solutions Group LLC that the required reviews were completed and they were both okay with the report provided by the applicant.

This concluded the staff report. Mr. Roman asked if there were any questions for staff and there were none. Mr. Roman asked if there was anyone to represent the application and recognized Tom Lyons, Farmers Business Network, 10630 Marina Drive, Olive Branch, MS 38654. He had nothing further to add to the report. Mr. Roman asked if there were any questions for this applicant and there were none. Mr. Roman asked if there was anyone else to speak for the application and there were none. Mr. Roman asked if there was anyone to speak against the application and there none. Mr. Roman asked if there was any discussion among the Board members. Ms. Cowan stated that her only concern was an overall concern for public health issues since this is the first facility of its kind. **Ms. Wiseman made a motion, finding that the request meets the 6 criteria, approve a Conditional Use Permit (CUP) to allow the processing and storage of chemicals, more specifically, the installation of a “herbicide dilution system” at 10630 Marina Dr., subject to the following conditions:**

- 1) **Conditional Use approval is for 10 years (expiring March 9, 2033) per request of applicant.**
- 2) **Application for building permit shall require approval from City’s Building and Fire Departments. Pursuant to obtaining required building permits, all inspections shall be completed prior to activation of the herbicide dilution unit.**
- 3) **Applicant shall maintain compliance with applicable City codes and ordinances, including Fire Department inspections. Failure to maintain compliance could result in Board of Adjustment revocation of the CUP.**

Mr. Edler made the second and the motion was approved as follows:

Jessica Cowan – Yes William Gray – Yes Aretha Wiseman – Yes
Ted Roman – Yes Angela Cook – Yes Jeff Edler – Yes Carl Williams – Yes

NEW BUSINESS

1. Application for a Zoning Variance submitted by Mike Davis, The Reaves Firm, on behalf of SF Pleasant Hill LLC. The request is to allow a 26ft encroachment into the 50ft front yard setback. The 0.533+/- acre property is zoned C-2, Highway Commercial District, and is located at the southeast corner of Pleasant Hill Rd and Goodman Rd, known as 6980 Pleasant Hill Rd. (File #VR23-0001).

Mr. Roman announced New Business item number 1 and asked for the staff report. Mr. Thomas shared the following: **BACKGROUND:** Mike Davis, the Reaves Firm, on behalf of SF Pleasant Hill LLC, requests a variance for a 26' encroachment of the canopy of the principal structure, and 15' encroachment of the building walls into the 50' front yard setback along Pleasant Hill Rd. and Goodman Rd. on a ±0.53 acre property located at 6980 Pleasant Hill Rd. The subject property is known as Lot 1 of the Jeremiah A.M.E. Church Two-Lot (Rev) subdivision (Figure 1), which was recorded on August 10, 2017. The site had previously been used as the Jeremiah A.M.E Church, but the structure containing the church was recently demolished in 2022. Directly off the eastern property line of Lot 1 is Lot 2, which is currently used as a cemetery (Figure 1). The property is located within the C-2, Highway Commercial zoning district, which has a minimum front yard setback of 50'. The existing plat shows an access easement across the northern portion of Lot 1 to provide access to the cemetery on Lot 2. In an associated application to the Planning Commission, the applicant intends to relocate the access easement along the property's easternmost property line (see Exhibit 4, yellow highlight). This will require the applicant to receive approval for a replat plat from the Board of Aldermen. However, the applicant does not want to go through the platting process unless the variance request is approved by the Board of (Zoning) Adjustment.

The overall intent for Lot 1 is for it to be developed as a 7-Brew, which is a drive-thru only coffee shop. According to the Request Letter included within the developer's application packet, there are three conditions of the site that would require the proposed coffee shop structure to encroach into the front yard setback: 1) the city has denied access to the site from Pleasant Hill Rd., and therefore entry must be from the access road to the south, 2) the narrowness of the lot makes it useable only for a small building, and thus the proposed 530 sq.ft coffee shop is the best use, and 3) Lot #2 of the existing subdivision is a cemetery, and, thus, cannot be encroached upon.

RECOMMENDED MOTION: Based on finding that a hardship exists and all the criteria have been met, approve the variance to allow a 26' encroachment of the canopy of a principal structure, and a 15' encroachment of the building wall into the 50' front yard setback for the purpose of constructing a coffee shop on the property at 6980 Pleasant Hill Rd.

1. The Planning Commission and Board of Aldermen approve the associated final plat application and the property owners record the plat
2. The developer submits civil, photometric, landscaping, and building plans to City Staff for administrative review and approval.
3. The applicant shall obtain a building permit before commencing construction.
4. Add a minimum 3' curbed landscape strip between the easternmost drive-thru aisle and the adjoining westerly access drive aisle.

This concluded the staff report. Mr. Roman asked if there were any questions for staff and there were none. Mr. Roman asked if there was anyone to represent the application and recognized Mike Davis, The Reaves Firm, 6800 Poplar Ave, Memphis, TN 38138. He had nothing further to add to the report. Mr. Roman asked if there were any questions for this applicant. Mr. Edler

asked to confirm that this would be strictly drive-thru and not dine-in and asked about how many employees there would be at one time. Mr. Davis confirmed this will be drive-thru only and they were anticipating 3-4 employees. Ms. Cowan asked how many cars can be there at one time and it was advised 20 cars could stack on the property. Ms. Wiseman asked regarding the entrance, the funeral guests would enter and remain to the right. The applicant advised yes. Ms. Cowan asked to clarify that this variance is to allow them extra space and it was advised yes. MS. Cowan asked about an overflow of traffic and a funeral at the same time and how that would work. The applicant advised there would be room for 15 cars in lane for the funeral. Mr. Thomas pointed out that they cannot park in that lane, it must be kept as a drive lane. There has never been a parking lot at the cemetery. Mr. Gambone advised the variance is to move the building as far north as possible which would allow for more stacking spaces for the coffee shop and would also free up cemetery traffic. Peak hours for the coffee shop would not normally coincide with a funeral service. Ms. Cowan asked how many spots were left available in the cemetery. Mr. Davis advised that he didn't have the numbers, but that the cemetery was pretty full. Mr. Asongayi advised that most visitors to the cemetery would park either on the grass or the shopping center and walk across. Co-mingling of the traffic from the coffee shop and funeral wouldn't occur at the entrance as much as the exit. They would normally blend while leaving the property. It might get a little full, but may not rise to the level of a safety issue. The church is the owner of the property and they are the ones selling to the coffee shop. Mr. Williams asked if they were actually providing a paved entrance where there was none. It was advised there will be no exit or entrance onto Pleasant Hill. Mr. Gray reiterated that there were limited spots available in the cemetery. The church's new location on Stateline Rd has a large facility for burials. He anticipates few funerals at this subject site. Mr. Williams said this would be a benefit to the city. Mr. Roman said that he has seen very few funerals at this location. Ms. Cowan asked if this would lock you in line at the coffee shop. Mr. Edler stated that yes, the landscape island would lock you in line. Mr. Roman asked if there was anyone else to speak for the application and there were none. Mr. Roman asked if there was anyone to speak against the application and there none. Mr. Roman asked if there was any discussion among the Board members. **Mr. Williams made a motion, based on finding that a hardship exists and all the criteria have been met, to approve the variance to allow a 26' encroachment of the canopy of a principal structure, and a 15' encroachment of the building wall into the 50' front yard setback for the purpose of constructing a coffee shop on the property at 6980 Pleasant Hill Rd.**

1. **The Planning Commission and Board of Aldermen approve the associated final plat application and the property owners record the plat**
2. **The developer submits civil, photometric, landscaping, and building plans to City Staff for administrative review and approval.**
3. **The applicant shall obtain a building permit before commencing construction.**
4. **Add a minimum 3' curbed landscape strip between the easternmost drive-thru aisle and the adjoining westerly access drive aisle.**

Mrs. Cook made the second and the motion was approved as follows:

Jessica Cowan – Yes William Gray – Yes Aretha Wiseman – Yes
Ted Roman – Yes Angela Cook – Yes Jeff Edler – Yes Carl Williams – Yes

2. Public hearing to revoke a Conditional Use Permit granted by the Board of (Zoning) Adjustment on October 13, 2022 to Alhaji Sirlif, property owner, to allow a tractor trailer drop yard, transportation terminal and cargo container storage yard on a 8.04+/-acre parcel located on the east side of HWY 78, at the end of Stateline Rd E (6602 Stateline Rd E.) (File # CU22-0010). The revocation request is submitted by the Department of Planning & Development staff (the administrative official) based on property owner's failure to comply with multiple conditions of the Conditional Use Permit approval.

Mr. Roman announced New Business item number 2 and asked for the staff report. Mr. Thomas shared the following: **BACKGROUND & ANALYSIS:** On October 13, 2022, the Board of (Zoning) Adjustment approved, and, thus, granted a conditional use permit for tractor trailer drop yard,

transportation terminal and cargo container storage yard located at 6602 Stateline Road subject to various conditions. The property owner has commenced the use of the property in violation of several approval conditions as stipulated below:

Condition	Status
1. All improvements shall be the responsibility of the developer and not the City of Olive Branch.	– No improvements have been made.
2. A full set of civil, landscaping, and photometric plans shall be submitted to the City’s Engineering and Planning staff, and be approved by them before a grading permit can be issued for the development.	– No civil, landscaping, and photometric plans have been submitted to the City for review.
3. The subdivision plat creating the site as subdivision lot must be recorded before a grading permit may be issued by the City of Olive Branch for commencement of any grading or construction work on the property.	– No plat has been recorded. – No building permit has been issued for construction to begin.
4. All conditions of the subdivision plat approval as ordered by the Board of Aldermen and applicable to the subject property must be fulfilled by the developer and shown on the civil construction plans set accordingly.	– Stateline Rd. improvements have not been made.
5. The construction plans shall show the height of the landscape berm to be a minimum of 20ft in height.	– No landscaping berm exists.
6. Any and all improvements proposed within the floodplain area of the property must meet the stipulations of the Flood Damage Prevention Ordinance of the City of Olive Branch as shall be determined by the Floodplain Administrator.	– No stipulations have been met.
7. It shall be the responsibility of the developer to secure all necessary approvals before commencing any construction over the gas line that traverses the property. The approval must be submitted to the Fire Department of the City of Olive Branch before commencement of grading and/or paving over this gas line.	– No construction has occurred over the gas line; therefore, no approval from the fire department hitherto required
8. All parking stalls and drive isles must be paved before commencement of their use. This may be achieved by altering the phasing plan to achieve project economic feasibility.	– No pavement exists on the site. – Trucks have been parked on unpaved surfaces (gravel).

REQUEST: Planning staff, acting as the administrative official, requests revocation of the Conditional Use Permit accordingly, and that the Board of Zoning) Adjustment order the applicant to remove all trailers and other vehicles parked on an unpaved surface on the property within fifteen (15) calendar days, which will terminate on Friday, March 24, 2023.

ALTERNATIVE MOTION: Alternatively, if the developer intends to pursue the development of the site with an alternative plan, the Board of (Zoning) Adjustment may consider tabling this revocation request until a new conditional use permit application is submitted by the property owner/developer for the Board’s consideration at its April 13, 2023 meeting, in accordance with Article X, Section 7 (c)(6) of the Zoning Ordinance. This should be subject to the property owner

at least recording the subdivision plat of the property or removing all vehicles and trailers from the site before the said April 13, 2023 meeting of the Board of (Zoning) Adjustment.

This concluded the staff report: Mr. Roman asked if they would have to remove the vehicles and staff advised yes. Mr. Roman asked if there was anyone to represent this matter and recognized Kunle Lawal, 6372 W Camberley Court, Memphis, TN 38119. He advised they had issues with the plat and were working to fix that. Mr. Asongayi noted that the property owner had provided a statement to staff and that was provided to the Board members in response to the Notice of Revocation and lists what they are willing to do to try and get into compliance. He advised that staff provided a motion and an Alternative Motion and that these would be an either/or scenario. Either record plat OR remove all cars before the meeting next month. He advised that Civil-Link was working on the paving plan. This could be tabled subject to: 1- Record plat (including providing letter of credit for the improvements to Stateline Rd) and 2- Paving lot and Bringing a new application with Site Plan in April. Ms. Cowan asked about a miscommunication. Mr. Asongayi advised the owner was not aware of the conditions of approval, but is aware now and wants to be in compliance. Ms. Cowan asked about thoughts on moving the trucks while this is tabled. Mr. Williams agreed that they should be removed while under review. Mr. Asongayi advised that some had been removed and had been sold. The Board could add an additional condition to remove the trucks and have no more trucks if they chose to. Mr. Gambone advised that would become a Code Enforcement issue to enforce and that could go through the Municipal Court and we would have to wait for that outcome. Ms. Cowan asked if that could be a show of good faith to have him remove them. Ms. Wiseman stated since he wasn't aware, it wasn't his fault. Mr. Asongayi stated that they could table to record the plat and with the new application in April, the Board can make a determination then. Ms. Cowan asked about the Letter of Credit. Mr. Gambone advised that would to pave and widen Stateline Rd as it enters the property. It would have to be received by the April meeting. The city is redoing Yahweh Dr. Mr. Roman asked if there were anyone present to speak against this matter and recognized Carl Sookraj 6880 Autumn Oaks Dr, Olive Branch, MS 38654. He advised he was here in April of last year and was given a list of conditions to be met before he could open his business. He followed the rules and met all of the conditions before he opened and he expects every business owner to do the same. He stated that another property owner had previously owned an adjacent property and he didn't pave that lot either. It's not fair to let someone get away with not following the rules. Ms. Cowan asked if Mr. Sookraj's property is the one surrounded the fence and it was. Mr. Asongayi advised that the subject property of today's discussion was prior used as truck parking and was almost considered being Grandfathered. The new owner thought the same thing and thought they could start. Civil-Link did not inform him of the conditions. He also said they were not required to follow the applicant's timeline. They could impose their own if they wish. Mr. Sookraj stated he is all for new business, but he wants everyone to follow the rules across the board. **Mr. Edler made a motion to table, if the developer intends to pursue the development of the site with an alternative plan, the Board of (Zoning) Adjustment may consider tabling this revocation request until a new conditional use permit application is submitted by the property owner/developer for the Board's consideration at its April 13, 2023 meeting, in accordance with Article X, Section 7 (c)(6) of the Zoning Ordinance. This should be subject to the property owner at least recording the subdivision plat of the property or removing all vehicles and trailers from the site before the said April 13, 2023 meeting of the Board of (Zoning) Adjustment.**

Ms. Wiseman made the second and the motion to table was approved as follows:

**Jessica Cowan – Yes William Gray – Yes Aretha Wiseman – Yes
Ted Roman – Yes Angela Cook – Yes Jeff Edler – Yes Carl Williams – Yes**

OTHER BUSINESS

Mr. Gambone wanted to read a letter of appreciation for Jeff Edler from the mayor into the minutes as this would be his last meeting.

ADJOURNMENT

Mr. Roman stated there being no further business, could he entertain a motion to adjourn. Mr. Gray made a motion to adjourn, seconded by Mr. Edler and the motion to adjourn the meeting at 7:20 p.m. was approved as follows:

**Jessica Cowan – Yes William Gray – Yes Aretha Wiseman – Yes
Ted Roman – Yes Angela Cook – Yes Jeff Edler – Yes Carl Williams – Yes**