

MINUTES FOR THE CITY OF OLIVE BRANCH BOARD OF ZONING ADJUSTMENT REGULAR MEETING ON APRIL 13, 2023

The City of Olive Branch Board of Adjustment meeting was held on Thursday, April 13, 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.

Mr. Roman introduced the new Board member, Darrel Berkley.

ROLL CALL

The roll was called with Angela Cook, William Gray, Ted Roman, Aretha Wiseman, Jessica Cowan, Carl Williams and Darrel Berkley 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 MARCH 9, 2023

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

Jessica Cowan – Yes William Gray – Yes Aretha Wiseman – Yes
Ted Roman – Yes Angela Cook – Yes Darrel Berkley – Yes Carl Williams – Yes

OLD BUSINESS

1. 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. ***(Tabled to this date at the meeting of March 9, 2023) Applicant requests this matter be further tabled to meeting on May 11, 2023).***

Mr. Roman announced Old Business Item number 1 and asked for the staff report. Mr. Asongayi advised this item was tabled until today subject to: 1: recording the plat and 2: come back with a new plan for moving forward. He advised since the last meeting, two things had happened, 1: the Board of Aldermen were asked to hear comments regarding the subdivision issue at the upcoming meeting on April 18th, which is why the original request was to table until May. However, as per the site visit today, all the vehicles have been removed from the gravel parking lot, so there are no existing violations. Therefore staff is withdrawing the petition to revoke with nothing to be voted on.

NEW BUSINESS

1. Application for a Zoning Variance submitted by Ben Smith, IPD, on behalf of Marvin Santos, property owner. The request is to approve a height variance to allow a 6ft (3ft above permitted 3ft) high fence in the front yard setback of a single family property. The 12.91+/- acre lot is zoned A-R, Agricultural-Residential District, and is located on the south side of Stateline Rd between Joy Lynn Cv and Germantown Rd, known as 8779 Stateline Rd E. (File #VR23-0002).

Mr. Roman announced New Business Item Number 1 and asked for the staff report. Mr. Asongayi shared the following: **BACKGROUND:** The applicant and property owner, Marvin Santos, seeks a +3ft front yard fence height variance to enable the construction of a 6ft high black, ornamental, wrought iron fence with brick columns for the security of his property at 8779 Stateline Rd E. The fence will be located 10ft from the front property line. The property is zoned, A-R, Agricultural Residential. Mr. Santos is currently constructing a single family house on the lot.

Article VII, Sec.2(B)(1)(c)(ii)(A) stipulates that “No fence, wall, or hedge shall be erected, constructed or maintained within the required front yard of any lot in excess of three (3) feet in height...” To permit the construction of a 6ft high fence in the front yard, therefore, a zoning variance is required.

RECOMMENDED MOTION: Based on finding that a hardship exists and all the criteria have been met, approve a +3ft variance to allow a 6ft high, black, ornamental, see-through, rail metal fence with brick columns, 10ft from the front property line, in the front yard setback of the property at 8739 Stateline Rd E subject to the applicant obtaining a building permit before construction.

This concluded the staff report. Mr. Roman asked if there were any questions for staff. Mr. Williams asked if the side fence would be wood. Mr. Asongayi advised it would be. Mr. Williams stated this looks to be consistent with the area. Mr. Roman asked if there was anyone to represent the application and recognized Marvin Santos, 8739 Stateline Rd, 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. **Mr. Williams made a motion, based on finding that a hardship exists and all the criteria have been met, to approve a +3ft variance to allow a 6ft high, black, ornamental, see-through, rail metal fence with brick columns, 10ft from the front property line, in the front yard setback of the property at 8739 Stateline Rd E subject to the applicant obtaining a building permit before construction. Mr. Gray 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 Darrel Berkley – Yes Carl Williams – Yes

2. Application for a Conditional use Permit submitted by Anthony Parish, AnSCO & Associates, LLC on behalf of AT&T Kentucky. The request is to allow two (2) small cell poles, 32' in height to be installed in the public right-of-way. One is proposed to be located at southwest corner of Hacks Cross Rd and Desoto Rd and the other is proposed to be at the northeast corner of Polk Ln and Desoto Rd. (File #CU23-0006)

Mr. Roman announced New Business Item Number 2 and asked for the staff report. Mr. Asongayi shared the following: **BACKGROUND:** On April 16, 2019, the Board of Aldermen adopted an ordinance regulating “small cell” facilities, which are being utilized across the country in more urbanized areas to expand capacity and coverage for mobile data networks. In some cases, small cell antenna can be attached to existing support structures, such as a streetlight or on the rooftop of a commercial building. But for a new support structure to be built, the City’s regulations require issuance of a Conditional Use Permit (CUP) by the Board of (Zoning) Adjustment (BZA).

RECOMMENDED MOTION: Based on the findings that the request meets the 4 criteria of the City's adopted regulations for small cell technology facilities and its design guidelines, and that the 6 standard criteria have also been adequately addressed, **approve** the CUP to allow two small cell poles, 32.1' in height, to be installed in the public right-of-way on the western side of Hacks Cross Rd. between Desoto Rd. and Ridgway Industrial Dr. and the eastern side of Polk Ln. between Polk Ln. Cv. and Desoto Rd., subject to the following conditions:

1. The City Engineer shall issue right-of-way permits to allow the two small cell towers to be placed in the public right-of-way.
2. Provide additional written evidence in accordance with the City's small cell ordinance requirements demonstrating that no reasonable collocation opportunity exists.

This concluded the staff report. Mr. Roman asked about the areas where these were proposed to be installed, He asked to clarify if these were not in residential areas, but close by and near Polk. Mr. Asongayi advised this is an area of transition. The closest house is to be torn down for a gas station. Mr. Roman also noted that the existing small cell tower on Pleasant Hill is on the same side as the power pole and questioned why these were not. Mr. Asongayi stated there may be a technical reason why they aren't able to. There is a discrepancy regarding the height. In one place it's listed as 32.1' but in others it's 27'. Mr. Roman asked if there was anyone to represent the application and recognized Gunter Gode, 740 N Madison St, Tupelo, MS 38804. He stated he would need to check with the corporate office, but the measurements on the drawing should be correct. He can also get clarification on the side of the street the towers are to be installed and can let staff know by tomorrow. Ms. Wiseman asked if it could be moved to the side of the street with the power pole. Ms. Cowan asked if the one slated for Hacks Cross and Desoto area could either be moved across the street or by the new warehouses. She said it would stick out there and wants to see other options for other areas. Mr. Gode stated these are small towers with a small range and this takes the burden off of the main towers. Mr. Gambone advised it's written into the ordinance to conceal within the edge of the building as a permitted use. The conditional use permit is required for a new smaller pole to be placed in the right of way. Mr. Williams stated the applicant would have chosen another option if they could have. He also said it may be a good thing they aren't on the same side as the power poles. If the power lines fall, the area may not have power, but would still have cell service. Mr. Asongayi stated there could be an additional condition to ensure all options are checked before placement. Mr. Williams asked if they would still have to get a right-of-way permit. Mr. Asongayi advised that yes, they must get Engineering approval for that permit. This application is just approval for the concept of the small cell tower. The exact location would be decided by engineering. Mr. Gambone stated it could be added to the motion to make sure IF they can move to the same side as power liens to make sure they do. Ms. Cowan stated she wanted to table to get more answers at the next meeting. Mr. Asongayi advised the maximum allowed height is 35 feet. Whether this is 32 or 27 isn't an issue, they are both allowed. In regards to the specific location, factors that will determine that will be reviewed and approved administratively. The Board can depend on staff to take care of that. If there are no technical reasons that require the opposite side of the street, then staff can mandate that. **Mr. Berkley made a motion, based on the findings that the request meets the 4 criteria of the City's adopted regulations for small cell technology facilities and its design guidelines, and that the 6 standard criteria have also been adequately addressed, to approve the CUP to allow two small cell poles, 32.1' in height, to be installed in the public right-of-way on the western side of Hacks Cross Rd. between Desoto Rd. and Ridgway Industrial Dr. and the eastern side of Polk Ln. between Polk Ln. Cv. and Desoto Rd., subject to the following conditions:**

1. **The City Engineer shall issue right-of-way permits to allow the two small cell towers to be placed in the public right-of-way.**
2. **Provide additional written evidence in accordance with the City's small cell ordinance requirements demonstrating that no reasonable collocation opportunity exists.**

3. Unless existing utilities would inhibit the effective technical functioning of the cell towers, they should be moved to the same side of the street where there are power lines

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

**Jessica Cowan – No William Gray – Yes Aretha Wiseman – Yes
Ted Roman – Yes Angela Cook – Yes Darrel Berkley – Yes Carl Williams – Yes**

OTHER BUSINESS

ADJOURNMENT

Mr. Roman stated there being no further business, could he entertain a motion to adjourn. Mr. Williams made a motion to adjourn, seconded by Mr. Gray and the motion to adjourn the meeting at 6:54 p.m. was approved as follows:

**Jessica Cowan – Yes William Gray – Yes Aretha Wiseman – Yes
Ted Roman – Yes Angela Cook – Yes Darrel Berkley – Yes Carl Williams – Yes**