

5000 Diamondhead Circle · Diamondhead, MS 39525

Phone: 228.222.4626 Fax: 228-222-4390 www.diamondhead.ms.gov

TO: City Council and City Manager

FROM: J. Pat Rich, Development Coordinator

DATE: August 28, 2024

SUBJECT: Lauren Hanat and Blair Nutting Side Yard Setback Variance

Lauren Hanat and Blair Nutting requested a variance to the 10' side yard setback for screened pool enclosure. The variance requested is 6'.

- Setback for pool decking is 4'. Side yard setback for enclosure is 10'. 6' difference.
- Lot is pie shaped and narrows to the rear.
- Similar variances for pool enclosures have been granted.
- The pool enclosure is screened and will have minimal, if any, impact on drainage.
- There were 2 objections (emails in packet).

The Planning & Zoning Commission voted 6-0 to recommend approving the variance.



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#### STAFF REPORT TO PLANNING COMMISSION

DATE: August 27, 2024

NATURE OF REQUEST: Lauren Hanat and Blair Nutting have filed an application requesting a variance from the Zoning Ordinance (Article 3.4.8) to allow the construction of a pool enclosure within 4' of the side yard property line. The property address is 7830 Alawai Avenue. The tax parcel number is 067Q-0-36-220.000. The property is in an R-6 zoning district. The side yard setback is 10'. The variance requested is 6'. The Case File Number is 202400364.

DATE OF PUBLIC HEARING BEFORE PLANNING COMMISSION: August 27, 2024

RECOMMENDATION TO PLANNING COMMISSION: To approve the variance as petitioned.

The staff recommends approving the variance based on the following findings of fact.

- A. That special conditions and circumstances do exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures, or buildings in the same district. Lot is pie shaped and narrows to 40' at the rear.
- B. That literal interpretation of the provisions of this title *would* deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this title. *There are many other screened enclosures in R-6. Similar variances have been approved.*
- C. That special conditions and circumstances, if any, do not result from the actions of the applicant. The pool decking is allowed to be 4' from the property line.
- D. That granting the variance requested *will not* confer on the applicant any special privilege that is denied by this title to other lands, structures, or buildings in the same zoning district.
- E. The variance, if authorized, *will* represent the minimum variance that will afford relief and *will* represent the least modification possible of the regulation in issue.
- F. The Variance *does* observe the spirit of the Ordinance and *will not* change the character of the district (area).
- G. The Variance will observe the spirit of the Comprehensive Plan.
- H. That the Variance requested *will not* result in any change in use or density of the subject property.

#### **Pat Rich**

From:

Austin Clark

Sent:

Monday, August 26, 2024 3:17 PM

To:

Pat Rich; lynn.debrow@gmail.com

Cc:

Derek Cusick; Jon McCraw; jer2743@gmail.com

Subject:

2 of 2 Fwd: Variance

(CC: Jon, Derek, Mr. Rodriguez (7834 Loa Place)

Pat, Lynn,

Please see below, I have two residents that are against the variance on Alawai. Can this be sent out to the board or is it too late?

# **Austin Clark**

Ward 4-Councilmember City of Diamondhead, MS ACLARK@DIAMONDHEAD.MS.GOV

From: Rodriguez < jer2743@gmail.com > Sent: Saturday, August 24, 2024 7:19 AM

**To:** Austin Clark <aclark@diamondhead.ms.gov>

Subject: Variance

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

To whom it may concern,

The 7834 Loa Place had a history of flooding and standing water when we first purchased in 2018. The flooding was coming through the fences of the neighboring properties of Alawai Ave. Within the year, we hired a contractor to install French drain which costed us couple thousands. It was not 100% successful since the basins didn't catch all standing waters. It is like having our own "pool" in the backyard.

The next couple years, we created a pathway (yes I already conferred with permit office, I was allowed) in our yard directing the flooding to the main drainage (even the city dug out a drainage on our front yard) without going into any neighboring properties. It successfully caught all neighboring flooding water and redirected it to the drainage (I still need to work on it a bit more, because I have a pocket in that pathway holding water until it either evaporate or just drain slowly in the ground.

Now that the pool project was already started (built), we were not informed that a pool was going to in the neighboring property. Considering how the sloping of the elevation navigates the rain to our property. I was under the assumption that the city would have this sort of data that restrict the building of a pool. We did reach out the city of our concerns.

First, I can understand having a pool is a nice luxury and family could enjoy, but if it causes flooding that is a huge concern. Are they going to be liable for any damage caused by the pool into our yard? Killing our grass from chlorine water? Damaging the wood fences that I installed? Etc?

Now as for the enclosure, they are asking to change the variances from 10 ft to 4 ft close to our fences. I can understand their need for privacy and enclosure is a nice touch. However, the roofing of the enclosure will bring more water into the fence area, with in mind that the elevation sloping will bring more flooding to our yard. With this concern, same question, are they going to be liable to the damage on our property caused by the flooding?

Now my interpretation of the "cause of the flooding", if it is a nature caused, that is different but if it is a cause by building something without consulting with the neighboring, that is a concern. I respectfully request, that the variance change be rejected.

۷r,

7834 Loa Place.

#### **Pat Rich**

From:

Austin Clark

Sent:

Monday, August 26, 2024 3:15 PM

To:

Pat Rich; lynn.debrow@gmail.com

Cc:

Jon McCraw; Derek Cusick; ear313313@icloud.com

Subject:

1 of 2 Opposition for 7830 Alawai Avenue

(CC: Jon, Derek, Evelyn Redding (7828 Alawai Ave)

Pat, Lynn,

Please see below, I have two residents that are against the variance on Alawai. Can this be sent out to the board or is it too late?

Thank you!

### **Austin Clark**

Ward 4-Councilmember City of Diamondhead, MS ACLARK@DIAMONDHEAD.MS.GOV

From: ear313313@icloud.com <ear313313@icloud.com>

Sent: Saturday, August 24, 2024 5:40 PM

To: Austin Clark <aclark@diamondhead.ms.gov>

Subject: Opposition to variance request for 7830 Alawai Avenue

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Dear Planning and Zoning Commission Chair and Members

This letter is written at the request of Mr Austin Clark our Councilmember of Ward 4

I am writing to request the Commission to adhere to the wise decision made in the past by your members to require at least ten feet set back for any construction adjacent to property lines

Mr Nuttings pool was inserted into the ground with approximately 4 feet from deck to ground

Dirt was added to slope downward toward adjacent properties possibly promoting additional drainage to adjacent yards

I assume Mr Nutting will be held liable for any insurance claims in the future for water damage caused by this drainage

I do not want to sit on my back patio and view his enclosure or eye sore over my fence

I believe this eye sore will decrease property values within sight of the structure

I strongly oppose allowing it to be built so close as 4 feet to my property

Several neighbors have mentioned that with the first hurricane it will blow over on adjacent properties and damage current homes

After visiting with Mr Pat Rich And Mr Beau King at the zoning office on 5/12/24

They said that the enclosure could be build 35 feet in height according to code. I would hope it would only be 8 feet in height if built

In addition after the pool construction Mr Nutting constructed an additional concrete parking space to extend his driveway toward the pool

Again with the pad sloping toward my property with additional water drainage toward My property and gate

To my knowledge he constructed no drainage pipes from the pool to the culverts adjacent to Alawai Avenue He does have two above ground pipes-one leading to my fence from the side of the pool and another leading to the new

Parking space coming from the pool pump equipment

For these many reasons I strongly encourage u to block this application for variance Evelyn Redding 7828 Alawai Avenue

Sent from my iPhone



# **AGENDA**

# PLANNING AND ZONING COMMISSION

Tuesday, August 27, 2024 6:00 PM CST

Council Chambers, City Hall and via teleconference, if necessary

Commissioner Bennett Commissioner Brewer Commissioner Debrow Commissioner Parrish Commissioner Harwood Commissioner Raymond Commissioner Nicaud

#### 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 July 23, 2024 minutes.

#### **New Business**

- <u>3.</u> Presentation by Bob Barber of Orion Planning explaining the sub districts (Mixed Use District, Live-Make District, Townhome District and Waterfront District) of the Aloha District that will be used for rezoning the C-1 Commercial District. Questions and discussion encouraged.
- Lauren Hanat and Blair Nutting have filed an application requesting a variance from the Zoning Ordinance (Article 3.4.8) to allow the construction of a pool enclosure within 4' of the side yard property line. The property address is 7830 Alawai Avenue. The tax parcel number is 067Q-0-36-220.000. The property is in an R-6 zoning district. The side yard setback is 10'. The variance requested is 6'. The Case File Number is 202400364.



The City of Diamondhead will hold a public hearing on a proposed Text Amendment to Ordinance Article 9 – Administration. The purpose is to add Architectural Review for Commercial Properties to the Planning Commission responsibilities. The Case File Number is 202400377.

# **Unfinished Business**

**Open Public Comments to Non-Agenda Items** 

#### **Commissioners' Comments**

### **Communication / Announcements**

The next City Council meeting is Tuesday, September 3, 2024.
 The next Planning Commission meeting is Tuesday, September 24, 2024.



5000 Diamondhead Circle Diamondhead, MS 39525

Ph: 228-222-4626 FX: 228-222-4390

# APPLICATION FOR VARIANCE REQUEST

Case Number: <u>2024 00364</u>
Date 7-9-2024
Applicant: Lauren Katherine Hanat & Richard Blair Nothing
Applicant's Address: 7830 Hawai Ave. Diamondhad MS 39525
Applicant's Email Address: blair nutting@gmail.com lauren.hanat@gmail.com
Applicant's Contact Number: (Home) (Work) (Cell) Blair (310) 963 - 1678
Property Owner: Lawren Katherine Hanat
Owner's Mailing Address: 1830 Hawai Ave., Diamordhad, MS. 395-25
Owner's Email Address lawren, hanata gmail. com
Owner's Contact Number: (Home) (Work) (Cell) (516) 695 - 2416
Tax Roll Parcel Number: 0000 - 0 - 36 - 20 .000
Physical Street Address: 7830 Hawai Ave., Diamondhead MS. 39525
Legal Description of Property: Pha. Unit3, BIKG, Lot al
Zoning District:
State Purpose of Variance: (Front/Side/Rear/Lot Size/Parking/Building/Coverage) Signage-Size-Height)
Side of the proposed pool enclosure is less than
The required set back (approximately 4' from the
Side of the proposed pool enclosure is less than The required set back (approximately 4' from the left side property line)

# 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 August 272 at 6 p.m. in the Council Chambers of the Diamondhead City Half.

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.

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 ( )

Varions of 61

# REQUIRED ITEM A

Property Owner <u>Lawren</u> Katherine Hawat
Street Address 7830 Alawai Avenue Diamond had, M5. Statement Describing Variance Request Der Profosed pool enclosure encroaches  within the 10' sefbach of the proving Malely  The reasons why it complies with the criteria for variances:
DO THE SPECIAL CONDITIONS AND/OR CIRCUMSTANCES EXIST WHICH AFFECT ONLY THE LAND OR STRUCTURE IN QUESTION AND NO OTHER SURROUNDING OR SIMILAR PROPERTIES?
The enclosure well be sevened so this well not create additional run off from the roof
2. WOULD LITERAL INTERPRETATION OF THE ZONING ORDINANCE DEPRIVE THE OWNER/APPLIANT OF RIGHTS COMMONLY ENJOYED BY OTHER PROPERTIES IN THE SAME ZONING DISTRICT?
Response: other properties have apply and
seriened enclosures which querond
within the required setback
3. ARE THE SPECIAL CONDITIONS OR CIRCUMSTANCES NOT CAUSED BY THE OWNER/APPLICANT?
Response: The lot in oil Shaped and committee of
do I sugar and sigueria us
the property line
4. WOULD THE REQUESTED VARIANCE NOT GIVE THE OWNER/APPLICANT ANY SPECIAL PRIVLEGES OR RIGHTS NOT SHARED BY OWNERS OF SIMILAR PROPERTIES?
desponse: I do not believe so as a flow managinter
have pools and encloseeses which
encreach withen the 10' set book

2023 17532
Recorded in the Above
Deed Book & Page
11-28-2023 03:35:48 PM
Timothy A Kellar
Hancock County

Prepared By: The Casano Law Firm, P.A. 4403 West Aloha Drive Diamondhead, MS 39525 228-255-0035 File No.: 23-0773 Return To: The Casano Law Firm, P.A. 4403 West Aloha Drive Diamondhead, MS 39525 228-255-0035

Index As: Lot 21, Blk 6, Diamondhead, Phase 2, Unit 3

STATE OF MISSISSIPPI COUNTY OF HANCOCK

#### **WARRANTY DEED**

For and in consideration of the sum of Ten And No/100 Dollars (\$10.00), cash in hand, paid, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, we

# Michelina M. Brocato and Jane B Carrow, Grantors

16621 Kapalama Ct. Diamondhead, MS 39525 Phone: 228-806-4364

Do hereby sell, convey, bargain and warrant to

Lauren Hanat, Grantee 7830 Alawai Avenue Diamondhead, MS 39525 Phone: 516-695-2416

The following described real property situated and located in Hancock County, Mississippi, more particularly and certainly described as follows:

Lot 21, Block 6, Unit 3, Diamondhead, Phase 2, a subdivision according to the map or plat thereof on file and of record in the office of the Chancery Clerk of Hancock County, Mississippi.

Together with all and singular the rights, privileges, improvements and appurtenances to the same belonging or in any wise appertaining.

This conveyance is made subject to any and all reservations, restrictions, easements, exceptions. covenants and conditions of record, including any mineral, oil or gas reservations and any covenants or restrictions of record.

If bounded by water, the warranty granted herein shall not extend to any part of the above described property which is tideland or coastal wetlands as defined in the Mississippi Coastal Wetlands Protection Act and this conveyance includes any natural accretion and is subject to any erosion due to the action of the elements.

The Grantors herein certify that the property herein above conveyed forms no part of the homestead of said Grantors.

It is agreed and understood that the taxes for the current year have been prorated as of this date on an estimated basis, and that when said taxes are actually determined, if the proration as of this date is incorrect, the parties herein agree to pay on a basis of an actual proration. All subsequent years taxes are specifically assumed by Grantee herein.

WITNESS OUR SIGNATURES, this the 20th day of November, 2023.

Jane B Carrow

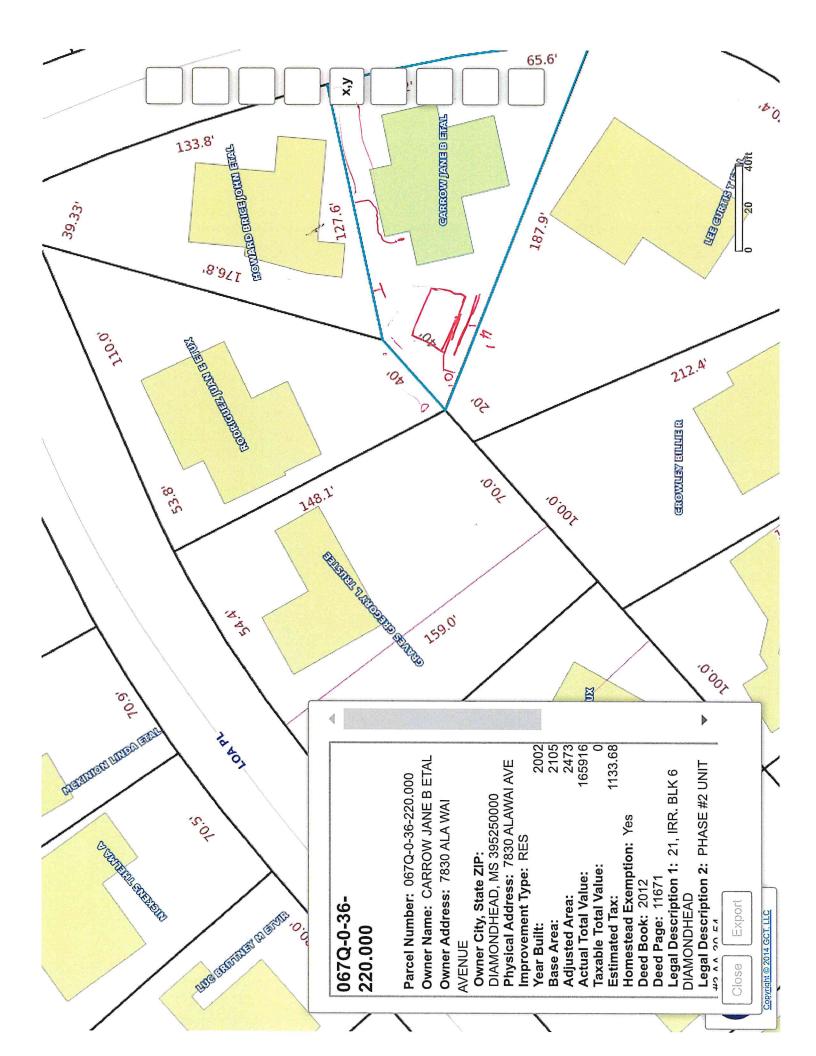
STATE OF MISSISSIPPI COUNTY OF HANCOCK

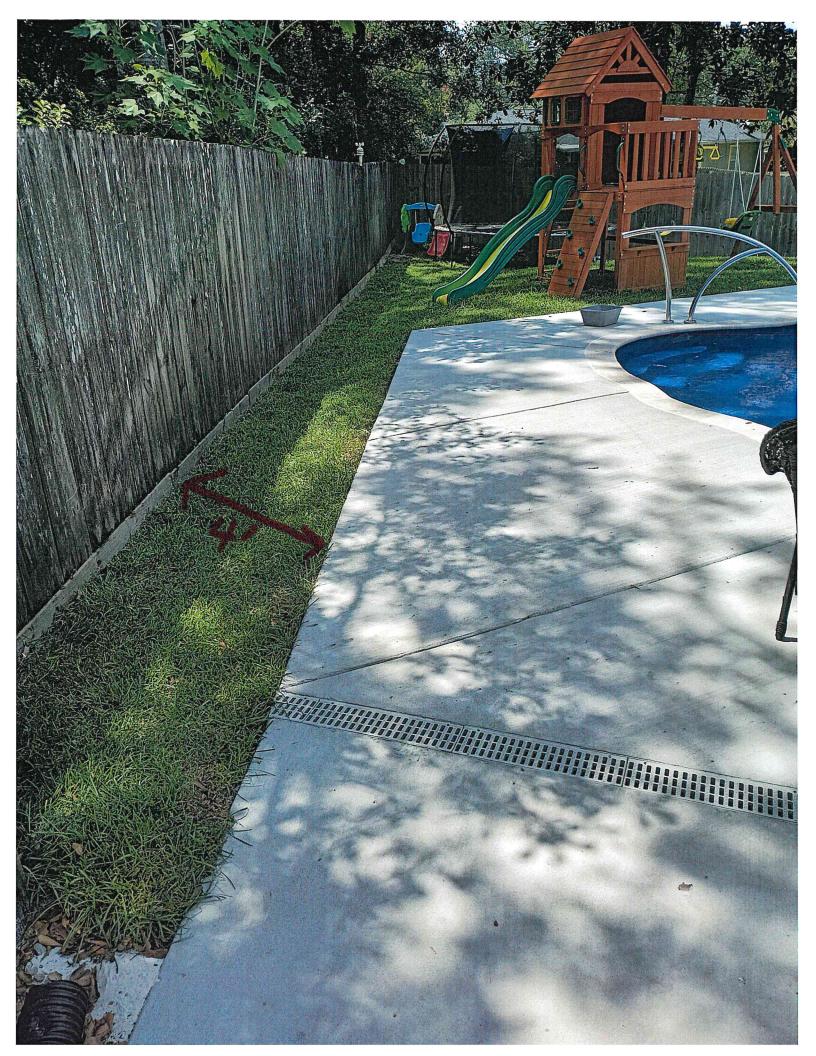
Personally came and appeared before me, the undersigned authority in and for the aforesaid County and State on this the 20th of November, 2023, Michelina M. Brocato and Jane B Carrow, who acknowledged that they/he/she signed and delivered the foregoing instrument of writing on the day and year therein mentioned.

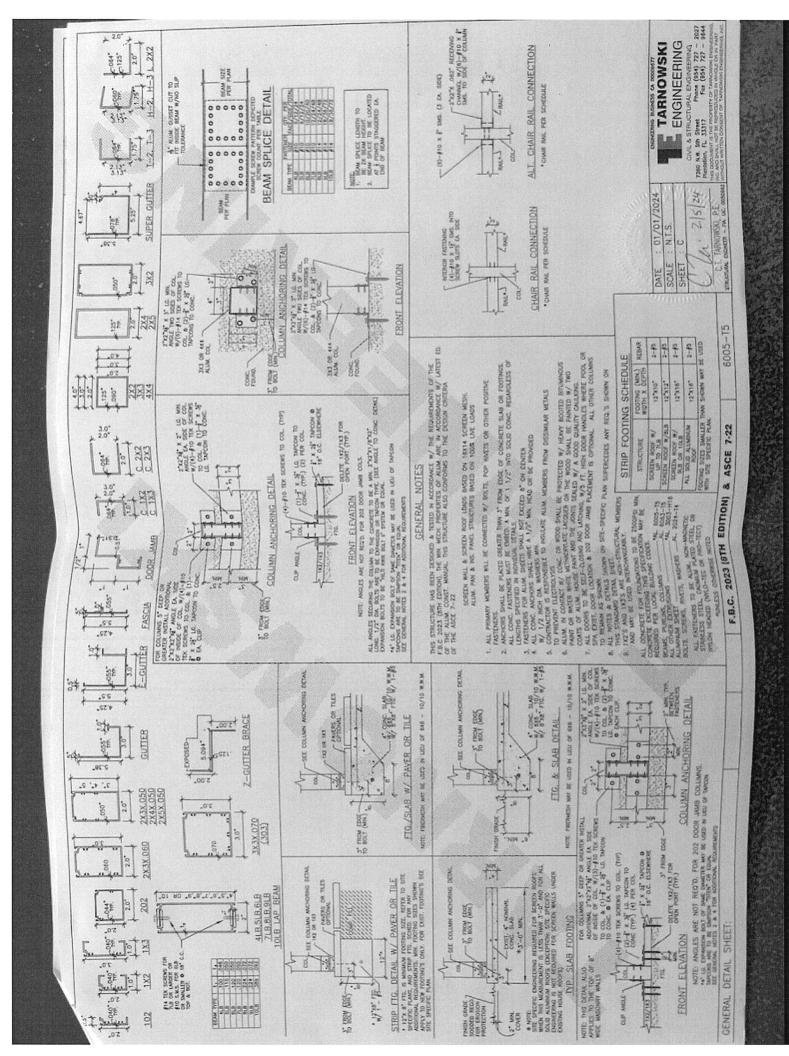
My Commission Expires:

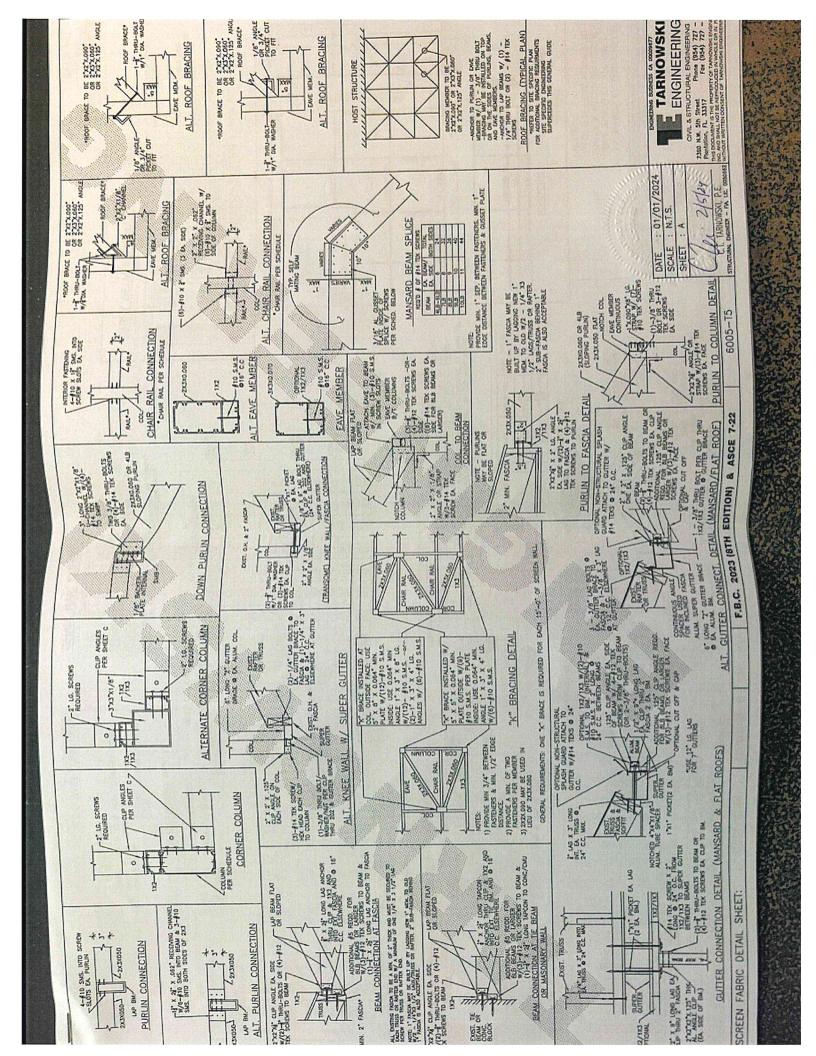
Hancock County I certify this instrument was 11-28-2023 03:35:48 PM and recorded in Deed Book 2023 at pages 17532 - 17533

Timothy A Kellar











5000 Diamondhead Circle Diamondhead, MS 39525-3260

Phone: 228.222.4626 Fax: 228-222-4390

www.diamondhead.ms.gov

TO: Lauren Hanat, Blair Nutting and adjacent property owners

FROM: J. Pat Rich, Development Coordinator

DATE: August 9, 2024

SUBJECT: Variance request before the Planning & Zoning Commission

Lauren Hanat and Blair Nutting have filed an application requesting a variance from the Zoning Ordinance (Article 3.4.8) to allow the construction of a pool enclosure within 4' of the side yard property line.

That fal

The property address is 7830 Alawai Avenue. The tax parcel number is 067Q-0-36-220.000. The property is in an R-6 zoning district. The side yard setback is 10'. The variance requested is 6'. The Case File Number is 202400364

In accordance with the Comprehensive Zoning Ordinance Article 9.8.6, 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 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**, **August 27**, **2024**, **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. This meeting will also be live streamed for your convenience at https://www.youtube.com/@cityofdiamondhead3502/streams.

If you have any questions or comments or would like to review the application, you may contact J. Pat Rich, Development Coordinator, at <u>p\_rich@diamondhead.ms.gov</u> or 228-242-1613.

# NOTICE OF PUBLIC HEARING PLANNING AND ZONING COMMISSION DIAMONDHEAD, MS

Lauren Hanat and Blair Nutting have filed an application requesting a variance from the Zoning Ordinance (Article 4.19) to allow the construction of a pool enclosure within 4' of the side yard property line.

The property address is 7830 Alawai Avenue. The tax parcel number is 067Q-0-36-220.000. The property is in an R-6 zoning district. The side yard setback is 10'. The variance requested is 6'. The Case File Number is 202400364.

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 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**, **August 27**, **2024**, **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. This meeting will also be live streamed for your convenience.

If you have any questions or comments or would like to review the application, you may contact J. Pat Rich, Development Coordinator, at <u>p\_rich@diamondhead.ms.gov</u> or 228-242-1613.