



TO: Mayor, City Council and City Manager

FROM: J. Pat Rich, Development Coordinator

A handwritten signature in blue ink, appearing to read "J. Pat Rich".

DATE: September 28, 2022

SUBJECT: Recommendation from Planning Commission to allow a 1' variance of the 20' rear yard setback for an attached roof over an existing patio.

Ralph Hays, 7435 Mahalo Hui Drive, is requesting a 1' variance of the 20' rear yard setback to construct a roof over an existing patio. The roof will be attached to the main structure so the 20' setback applies. Even though the property line is only 19' from the patio edge, as you can see from the attached pictures, the out of bounds marker is another 30' beyond the property line so it does not infringe upon the golf course. A side view of the property shows an upper-level deck along the same sight line. The Planning Commission approved the recommendation 6-0 at its September 27, 2022, meeting.



Commissioner Bennett  
 Commissioner Brewer  
 Commissioner Cook  
 Commissioner Debrow  
 Commissioner Flowers  
 Commissioner Layel  
 Commissioner Nicaud

## AGENDA PLANNING AND ZONING COMMISSION

Tuesday, September 27, 2022

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 August 23, 2022 minutes.

### New Business

*Approved  
6-b*

3. Willie Kerner has filed an application requesting a variance from the Zoning Ordinance (Article 4.19) to allow the construction of an accessory building (utility shed) within 6' of the primary structure. The property address is 63715 Diamondhead Drive North. The tax parcel number is 068Q-1-41-079.000. The property is in a R-2 zoning district. The setback from the primary structure is 10'. The variance requested is 4'. The Case File Number is 202200412.

*Approved  
6-d*

4. Ralph E. Hays has filed an application requesting a variance from the Zoning Ordinance (Article 4.19) to allow the construction of a roof over an existing patio within 19' of the rear property line on the golf course. The property address is 7435 Mahalo Hui Drive. The tax parcel number is 067N-2-35-048.001. The property is in a R-2 zoning district. The rear yard setback is 20'. The variance requested is 1'. The Case File Number is 202200423.

### Unfinished Business

*Approved*

5. The City of Diamondhead represented by J. Pat Rich, Development Coordinator, has filed an application requesting a text amendment in accordance with the Zoning Ordinance Article 2.8 Amendment (Rezoning) Procedure. The proposed text amendment is to add a Short-Term Rental ordinance. The proposed changes will be in Article 4.21.1 - Conditions Governing Permitted Uses Table 4.2, add "Short-Term Rental, Use by Right Review in R-1, R-2, R-3, R-4 and MH"; add conditions as note "19" after Table 4.2 "19. Short-Term Rentals in R-1 and R-2 Zoning Districts shall not be within 1000 linear feet from property to property of another short-term rental". Add new Short-Term Rental Ordinance (attached). The Case File Number is 202200281.

*5-1*

*as Amended*



# City of Diamondhead

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5000 Diamondhead Circle, Diamondhead, MS 39525

Phone: (228) 222.4626

FAX: (228) 222-4390

[www.diamondhead.ms.gov](http://www.diamondhead.ms.gov)

## STAFF REPORT TO PLANNING COMMISSION

DATE: September 22, 2022

CASE FILE NUMBER: 202200423

APPLICANT: Ralph Hayes

TAX PARCEL NUMBER: 067N-2-35-048.001

PHYSICAL STREET ADDRESS: 7435 Mahalo Hui Dr.

ZONING DISTRICT: R-2 Medium Density Single Family Home

TYPE OF APPLICATION: Variance

NATURE OF REQUEST: Ralph E. Hays has filed an application requesting a variance from the Zoning Ordinance (Article 4.19) to allow the construction of a roof over an existing patio within 19' of the rear property line on the golf course. The rear yard setback is 20'. The variance requested is 1'.

DATE OF PUBLIC HEARING BEFORE PLANNING COMMISSION: September 22, 2022

ACTION BY THE PLANNING COMMISSION:

FINDINGS: The Planning Commission may recommend granting a variance provided affirmative findings of fact are made on each of the following criteria:

- A. That special conditions and circumstances 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. By way of example, special conditions or circumstances peculiar to land could include irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions.
- 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.
- C. That special conditions and circumstances do not result from the actions of the applicant.
- 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 would observe the spirit of the Ordinance and would not change the character of the district.

- G. The Variance would 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.
- I.

NOTES: In recommending that any variance be granted, the Planning Commission may prescribe appropriate conditions and safeguards in conformity with the zoning ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of the zoning ordinance and punishable as determined within the zoning ordinance.

Under no circumstances shall the Planning Commission or Mayor and City Council grant a variance to allow a use not permissible under the terms of the zoning ordinance in the district involved, or any use expressly or by implication prohibited by the terms of the zoning ordinance in said district.

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.
- 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.
- C. That special conditions and circumstances, if any, *do not* result from the actions of the applicant.
- 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.



Property line







5000 Diamondhead Circle  
Diamondhead, MS 39525  
Ph: 228-222-4626  
FX: 228-222-4390

APPLICATION FOR VARIANCE REQUEST

Case Number: 202200423

Date 8/29/22

Applicant: Ralph E. Hays

Applicant's Address: 7435 Mahalo Hui Dr

Applicant's Email Address: hays.rufus@gmail.com

Applicant's Contact Number: (Home) \_\_\_\_\_ (Work) \_\_\_\_\_ (Cell) 601/209-8089

Property Owner: Ralph E. Hays

Owner's Mailing Address: 7435 Mahalo Hui Dr

Owner's Email Address: hays.rufus@gmail.com

Owner's Contact Number: (Home) \_\_\_\_\_ (Work) \_\_\_\_\_ (Cell) 601/209-8089

Tax Roll Parcel Number: 067N-2-35-048.001

Physical Street Address: 7435 Mahalo Hui Dr

Legal Description of Property: Lot 15, Block 21, Unit 10, Diamondhead, Phase 2

Zoning District: R-2

State Purpose of Variance: (Front/Side/Rear/Lot Size/Parking/Building/Coverage)  
(Signage-Size-Height) To place an open cover over existing  
AAFO within 6' of rear property line on Golf course.  
14' variance

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 September 27, 2022 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.

Ralph E. Hays  
Signature of Applicant

Ralph E. Hays  
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 A**

Property Owner

Ralph E. Hays

Street Address

7435 Mahalo Hui Dr

Statement Describing Variance Request

REQUEST TO ADD A COVER OVER THE EXISTING PATIO

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: This home was built with 3 sets of windows/floors

rear of home but no cover was completed @ that time. The patio was poured in 1991 but not covered. All homes in this area have some sort of rear patio cover.

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: YES, I HAVE SURVIVED CANCER THREE TIMES & WISH TO ENJOY my back patio w/o THE EXTREME SUN BOTH IN THE MORNING & AFTERNOON. ADJACENT PROPERTIES ALL HAVE SOME SORT OF COVER FROM THE SUN.

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

Response: No, I only wish to complete the construction from 1991.

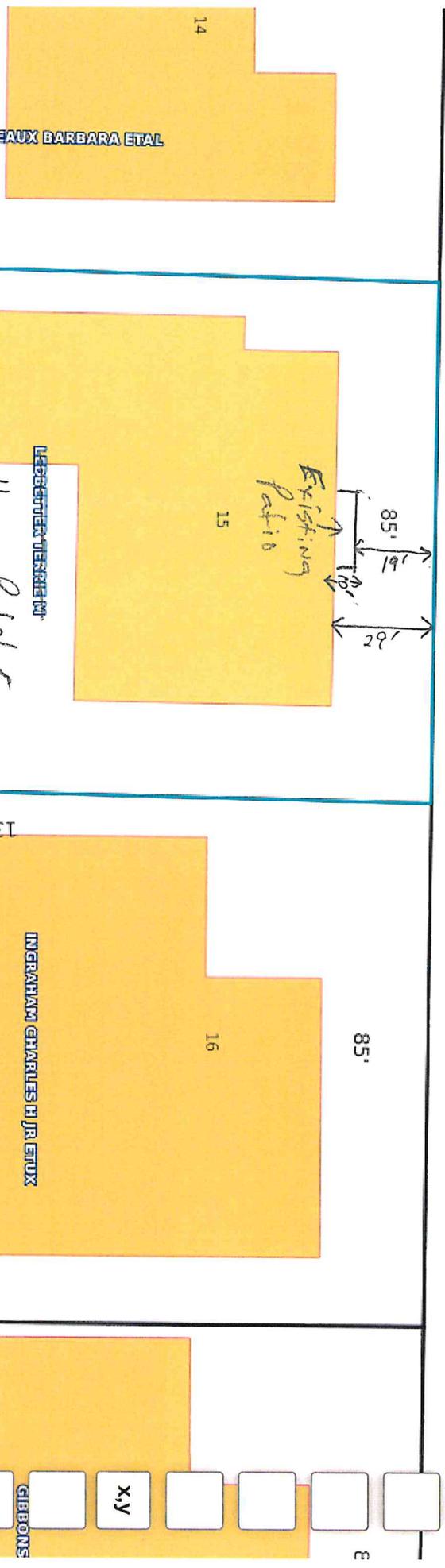
4. WOULD THE REQUESTED VARIANCE NOT GIVE THE OWNER/APPLICANT ANY SPECIAL PRIVILEGES OR RIGHTS NOT SHARED BY OWNERS OF SIMILAR PROPERTIES?

Response: No, the cover would only give me some of the same privileges as my neighbors.

Therefore, I respectfully request the approval of this variance request.

1' Variance RYSB

DIAMONDHEAD COUNTRY CLUB & POA



QUEBEDEAUX BARBARA ETAL

LEFEBVIER-TERRIER CO.

Hayes, Ralph E

INGRAMM CHARLES H JR ETUX

GIBBONS

X,Y



MAHALO HUI DR



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www.diamondhead.ms.gov

TO: Ralph E. Hays and adjacent property owners

FROM: J. Pat Rich, Development Coordinator *J. Pat Rich*

DATE: September 9, 2022

SUBJECT: Variance application request before the Planning & Zoning Commission

Ralph E. Hays has filed an application requesting a variance from the Zoning Ordinance (Article 4.19) to allow the construction of a roof over an existing patio within 6' of the rear property line on the golf course.

The property address is 7435 Mahalo Hui Drive. The tax parcel number is 067N-2-35-048.001. The property is in a R-2 zoning district. The rear yard setback is 20'. The variance requested is 14'. The Case File Number is 202200423.

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, 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, September 27, 2022, 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 the Building Department at the above address and/or at 228-222-4626.

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

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