



TO: Mayor, City Council and City Manager

FROM: J. Pat Rich, Development Coordinator

A handwritten signature in black ink, appearing to read "J. Pat Rich", is written over the printed name.

DATE: December 15, 2021

SUBJECT: Recommendation from Planning Commission Covered Patio Variance Request Janet and John Curvey

Janet Harmon-Curvey and John A. Curvey have filed an application requesting a variance from the Zoning Ordinance (Article 4.19) to allow the construction of a covered patio (36.26' x 11.4') within 17.9' of the rear property line. Additionally, to construct a masonry fireplace (3'x6') within 14.9' of the rear property line.

The property address is 7518 Augusta Way. The tax parcel number is 067M-2-35-007.000. The property is in an R-1 zoning district. The rear yard setback is 20'. The variance requested for the covered patio is 2.1' and the fireplace is 5.1'. The Case File Number is 202100459.

At its regular meeting on December 14, 2021, the Planning Commission voted 6-1 to recommend approving the variance.



Commissioner Flowers  
Commissioner Layel  
Commissioner Debrow  
Commissioner Rubar  
Commissioner Hourin  
Commissioner Torguson  
Commissioner Hector

## AGENDA PLANNING AND ZONING COMMISSION

Tuesday, December 14, 2021

6:00 PM CST

Council Chambers, City Hall  
and via teleconference, if necessary

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### 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 October 26, 2021 minutes.

### New Business

3. Presentation by Robert Barber with Orion Planning to update the Commission on Short Term Rental ordinance progress. This is for information and discussion only. No vote will be taken
4. Janet Harmon-Curvey and John A. Curvey have filed an application requesting a variance from the Zoning Ordinance (Article 4.19) to allow the construction of a covered patio (36.26' x 11.4') within 17.9' of the rear property line. Additionally, to construct a masonry fireplace (3'x6') within 14.9' of the rear property line. The property address is 7518 Augusta Way. The tax parcel number is 067M-2-35-007.000. The property is in an R-1 zoning district. The rear yard setback is 20'. The variance requested for the covered patio is 2.1' and the fireplace is 5.1'. The Case File Number is 202100459.
5. B&G Food Enterprises, LLC, has filed an application requesting Planning Commission Review as required by the Zoning Ordinance (Article 4.21.1 B) to allow the construction of a drive-in restaurant, Taco Bell. The property address is 4405 Aloha Drive. The tax parcel number is 131E-1-13-006.002. The property is in a C-1 General Commercial zoning district. Drive-in restaurants are considered permitted uses with the review and approval in accordance with the Planning Commission review provisions set forth in the Zoning Ordinance (Article 2.4). The Case File Number is 202100483.
6. The City of Diamondhead represented by Ronald Jones, Building Official, has filed an application requesting a text amendment to reduce the number of publication days and increase the number of mail notices in the Zoning Ordinance (Ord. 2012-006) and Subdivision Regulations (Ordinance 2020-001). Case File Number is 202100493. The proposed text amendments would make the

Approved  
6-1



# City of Diamondhead

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: December 14, 2021

CASE FILE NUMBER: 202100459

APPLICANT: Janet Harmon-Curvey and John A. Curvey

ZONING DISTRICT: R-1 Low Density Single Family

TYPE OF APPLICATION: Variance

NATURE OF REQUEST: Janet Harmon-Curvey and John A. Curvey have filed an application requesting a variance from the Zoning Ordinance (Article 4.19) to allow the construction of a covered patio (36.26' x 11.4') within 17.9' of the rear property line. Additionally, to construct a masonry fireplace (3'x6') within 14.9' of the rear property line.

The property address is 7518 Augusta Way. The tax parcel number is 067M-2-35-007.000. The property is in an R-1 zoning district. The rear yard setback is 20'. The variance requested for the covered patio is 2.1' and the fireplace is 5.1'. The Case File Number is 202100459.

DATE OF PUBLIC HEARING BEFORE PLANNING COMMISSION: December 14, 2021

### 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 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.

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.

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 <sup>Approving</sup> ~~denying~~ 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. *This house was built in 2003 with-in 17.9' of the rear property line. It is assumed that permission to do so was granted by the County, POA or both. The requested covered patio is an extension of the rear of the house and will not be any closer to the rear property line.*

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. *Other properties adjoining the golf course have covered patios and have been able to utilize setback permissions that were previously granted.*

C. That special conditions and circumstances do not result from the actions of the applicant. *This home was built in 2003 and permission was given prior to current owners.*

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. *Other properties that have been granted setback permission are able to utilize the permission.*

E. The variance, if authorized, is not beyond the minimum variance that will afford relief and will not represent the least modification possible of the regulation in issue. *Applicant is not asking for an additional variance but to utilize permission previously granted.*

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.

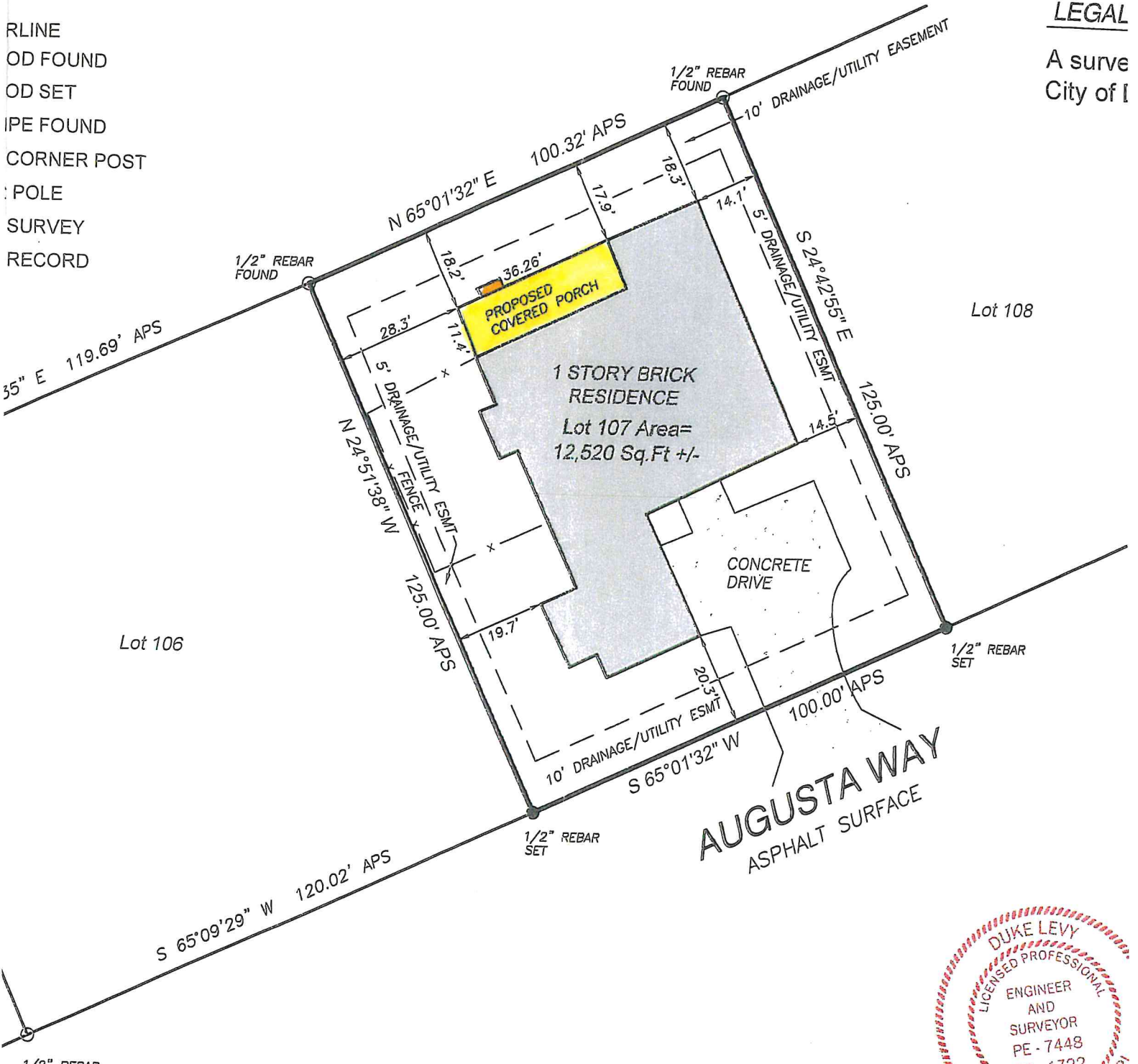
H. That the Variance requested will not result in any change in use or density of the subject property.

# PLOT PLAN

LEGAL

A survey  
City of I

RLINE  
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CORNER POST  
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SURVEY  
RECORD



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o obtain or show  
location of any  
Mississippi  
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ination was  
n can be made

## REFERENCES:

- 1) DEED BOOK 2016 PAGE 14597
- 2) PLAT OF GLEN EAGLE S/D, PHASE 1





5000 Diamondhead Circle ·  
Diamondhead, MS 39525-3260  
Phone: 228.222.4626 Fax: 228-222-4390  
www.diamondhead.ms.gov

TO: Janet Harmon-Curvey, John A. Curvey and adjacent property owners

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

DATE: November 24, 2021

SUBJECT: Variance application request before the Planning & Zoning Commission

Janet Harmon-Curvey and John A. Curvey have filed an application requesting a variance from the Zoning Ordinance (Article 4.19) to allow the construction of a covered patio (36.26' x 11.4') within 17.9' of the rear property line. Additionally, to construct a masonry fireplace (3'x6') within 14.9' of the rear property line.

The property address is 7518 Augusta Way. The tax parcel number is 067M-2-35-007.000. The property is in an R-1 zoning district. The rear yard setback is 20'. The variance requested for the covered patio is 2.1' and the fireplace is 5.1'. The Case File Number is 202100459.

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, October 26, 2021~~, <sup>Dec 14</sup> 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**

Janet Harmon-Curvey and John A. Curvey have filed an application requesting a variance from the Zoning Ordinance (Article 4.19) to allow the construction of a covered patio (36.26' x 11.4') within 17.9' of the rear property line. Additionally, to construct a masonry fireplace (3'x6') within 14.9' of the rear property line.

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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.



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

RECEIVED  
NOV 01 2021  
BY: RJ

APPLICATION FOR VARIANCE REQUEST

Case Number: 202100459  
Date 11/1/2021

Applicant: Janet Harmon-Curvey, John A. Curvey

Applicant's Address: 7518 Augusta Way Diamondhead, MS <sup>3</sup>39525

Applicant's Email Address: curvey32@hotmail.com

Applicant's Contact Number: (Home) \_\_\_\_\_ (Work) \_\_\_\_\_ (Cell) 812-344-6844 Janet  
228-364-2522 John

Property Owner: Janet Harmon-Curvey, John A. Curvey

Owner's Mailing Address: 7518 Augusta Way Diamondhead, MS 39525

Owner's Email Address curvey32@hotmail.com

Owner's Contact Number: (Home) \_\_\_\_\_ (Work) \_\_\_\_\_ (Cell) 812-344-6844 Janet  
228-364-2522 John

Tax Roll Parcel Number: 067M-2-35-007.000

Physical Street Address: 7518 Augusta Way

Legal Description of Property: Glen Eagle STD, PH 1, Lot 177

Zoning District: R-1 RYSB 20'

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

To build a covered patio (36.26' x 11.4') with 17.9' of the rear property line. Additionally to construct a masonry fireplace within 4.9' of the rear property line.



## 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 Tuesday, Dec 14, 2021 at 6:00 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.

  
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 A

Property Owner Janet Harmon-Curvey, John A. Curvey

Street Address 7518 Augusta Way Diamondhead, MS 39525  
Statement Describing Variance Request

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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: Not aware if other homes built in same era (2003) are affected by the current 20' rear set back or not.

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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: Many nearby neighbors enjoy screened patios. If our variance is denied, it will affect the esthetics of the rear view of the home because the new const. will not match up to the furthest rear footprint of the home.

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

Response: Special conditions/circumstances are not caused by owners/applicants.

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

Response: The requested variance would not give us any special privileges or rights. Many of our neighbors enjoy screened outdoor areas attached to their homes. Our, unfortunately, was built in 2003 before Diamond head was a city. Without a variance we cannot construct the screened outdoor patio area ~~that would match our current set back footprint of 17'9" from property line.~~ that would match our current set back footprint of 17'9" from property line.

Subject: 7518 Augusta Way Variance Request - Additional Information

We purchased the property in December 2019. Since then, we've really enjoyed the home and Diamondhead. We especially have enjoyed watching the golfers during the day and other residents as they traverse the cart path in the evenings. While we've owned the home, we've made a number of improvements to the property. With that same spirit in mind, we thought it would be nice to incorporate more of the outdoors into our daily living environment. As much as we enjoy sitting outside, we know it would be that much more enjoyable if we had a screened-in back patio.

As we've started to plan on making the addition, we discovered that our home (which was built in 2003) extends into the 20 foot property set back by about 2 feet. As we understand it, the portion of the home that sits inside the set back is essentially grandfathered. The screened-in patio that we would add would essentially be an extension of the original footprint of the house and therefore also extend into the 20 foot set back by about 2 feet. By keeping the design within the footprint it would make the addition symmetrical and aesthetically appealing.

Here are some additional notable items:

1. The addition would not obstruct our neighbors' view of the golf course or neighborhood.
2. The addition would sit approximately 50 feet from the cart path on the Cardinal's 6th hole.
3. The construction would include a masonry fireplace and would meet or exceed the standards that the home and surrounding homes have in place today.
4. We would employ a contractor that is well established and has a strong reputation for quality work in Diamondhead.

Thank you for your consideration.



## HARMON-CURVEY JANET ETAL

**Parcel Number:** 067M-2-35-007.000  
**Owner Name:** HARMON-CURVEY JANET ETAL  
**Owner Address:** 7518 AUGUSTA WAY  
**Owner City, State ZIP:** DIAMONDHEAD, MS 39525  
**Physical Address:** 7518 AUGUSTA WAY  
**Improvement Type:** RES  
**Year Built:** 2003  
**Base Area:** 2794  
**Adjusted Area:** 3282  
**Actual Total Value:** 377260  
**Taxable Total Value:** 377260  
**Estimated Tax:** 4405.94  
**Homestead Exemption:** Yes  
**Deed Book:** 2019  
**Deed Page:** 15659  
**Legal Description 1:** LOT 107 GLEN EAGLE PHASE 1  
**Legal Description 2:**  
**Legal Description 3:**  
**Legal Description 4:**  
**Legal Description 5:**  
**Legal Description 6:**  
**Longitude:** -89.370773  
**Latitude:** 30.392772  
**Square Footage:** 12604.986008

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**Sketches****Sketch    Sketch Name**

067M-2-35-007\_00001-Model.gif

**Condos**