

**CITY OF GAUTIER  
MEMORANDUM**

**To:** Samantha Abell, City Manager

**From:** Babs Logan, Planning Technician

**Thru:** Eric Meyer, Economic Development Director

**Date:** January 23, 2013

**Subject:** Appeal to Staff Decision Regarding Occupying a Structure in a C-3 Zoning District as a Residence (GPC Case No. 12-26-AP)

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**REQUEST:**

The applicant, Tony Luong dba HLV, LLC, requested to occupy a house located in a C-3 Highway Commercial zoning district as a residence. The house is located at 3608 Highway 90, PID #82434024.000, and has most recently been occupied by a commercial business which caused it to lose its legal nonconforming status. Staff denied the request and the applicant appealed the decision to the Planning Commission.

**DISCUSSION:**

Staff has attached a Staff Report with detailed project analysis. The Planning Commission held a public hearing on January 3, 2013 to consider the appeal request. Commissioner Dailey made a motion to reverse the Staff decision and allow the structure to be occupied as a residence. Commissioner Dailey stated that his motion was based on the fact that, after hearing the information given by Staff and the applicant, his opinion is that the residential status was never changed, that it was maintained as a residence for the entire time of occupancy and that he does not feel that the lease reflects the intention of the land owner for the use of that property. The motion did not receive a majority vote and the applicant opted to appeal to Council.

**ATTACHMENTS:**

Staff Report with Back Up

**Gautier Planning Commission**

**Regular Meeting Agenda**

**January 3, 2013**

**VII. NEW BUSINESS**

**A. APPEAL**

1. REQUEST FOR AN APPEAL TO STAFF DECISION REGARDING OCCUPYING A HOUSE IN A C-3 ZONING DISTRICT AS A RESIDENCE, 3608 HIGHWAY 90, (TONY LUONG DBA HLV, LLC) (GPC CASE #12-26-AP)

## QUASI-JUDICIAL PROCEDURES

1. Announcement of Matter. Read the matter title to be considered.
2. Swear the Witnesses. All witnesses, parties, citizen participants and City Staff who plan to speak at the hearing shall collectively be sworn at the beginning of the hearing by the City Attorney
3. Ex Parte Disclosure. All members must disclose on the record any ex parte communications, to include any physical inspections of the subject property. The disclosure should include with whom any communication has taken place, a summary of the substance of the communication, and the date of the site visit, if any. If anyone has received written communications, the writing must be presented, read into record or a copy provided to all participants, and made a part of the official record.
4. Applicant Presentation.
5. Questions directed to Applicant. The applicant should answer any questions by the public, the Council, or others.
6. Staff Presentation. This includes presentation of the staff report into the official record.
7. Objections from Applicant. Confirm whether there are objections from the applicant regarding the staff report or development order.
8. Questions directed to Staff. The staff answers any questions by the public, the Council, or others.
9. Public Comments. Members of the public should be allowed to make comments regarding the application.
10. Applicant rebuttal/final comments
11. Staff rebuttal/final comments
12. Call for final questions.
13. Close public portion of the hearing.
14. Motion & Deliberation. Council makes a motion, and debates and deliberates regarding the application and development order.
15. Vote.
16. Close the quasi-judicial proceeding.

**CITY OF GAUTIER  
STAFF REPORT**

**To:** Chairman and Members, Planning Commission

**From:** Babs Logan, Planning Technician

**Through:** Eric Meyer, Economic Development Director

**Date:** December 19, 2012

**Subject:** Appeal to Staff Decision Regarding Occupying a Structure in a C-3 Zoning District as a Residence (GPC Case No. 12-26-AP)

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**REQUEST:**

The Economic Development/Planning Department has received an Appeal to Staff Decision from Tony Luong dba HLV, LLC, regarding occupying a house located in a C-3 Highway Commercial zoning district as a residence. The house is located at 3608 Highway 90, PID #82434024.000, and has most recently been occupied by a commercial business. The application fee of \$100 was paid on November 20, 2012. All public notice requirements have been met.

**BACKGROUND:**

The request property is located in a C-3 Highway Commercial zoning district which does not allow single-family dwellings. The house was recently occupied by a Psychic Reading business. In March 2008, a residential transitional home for women was approved at that location as a conditional use but was only at that location for about a year.

General Features:

Location: (See Exhibit A)  
Collector Street: Highway 90  
Gross Lot Acreage: approximately 1.35 acres  
Potable Water and Wastewater Services: Existing from City

Zoning and Land Use:

Current zoning of the applicant's property – C-3 Highway Commercial

Current Surrounding Zoning (See Exhibit B) – C-3 Highway Commercial to the south, east and west; R-1 Low Density Single Family Residential to the north

Current Surrounding Existing Land Use (See Exhibit C): Commercial to the south, east and west, vacant to the north

Comprehensive Plan Future Land Use Designation (See Exhibit D): High Impact Commercial

**DISCUSSION:**

The house in question is located in a C-3 Highway Commercial zoning district which does not allow single-family dwellings. The property, with its existing residence, was annexed in 2002 and zoned C-3. As long as the house was occupied as a residence it was considered a legal non-conforming use, but once it was used as a commercial business it lost its legal non-conforming status.

A Physic Reading business was located in the structure prior to closing in September, 2012. The structure has been occupied with a commercial use and can no longer be used as a residence, because single-family dwellings are not allowed in a C-3 Highway Commercial zoning district.

**DETERMINATION OF APPLICABLE LAW:**

**SECTION 3.7: Appeals**

Persons aggrieved with decisions of administrative staff or decisions of the Planning Commission may appeal the decisions

**3.7.1 Appeal of Administrative Decision**

Appeals from written administrative decisions of the Economic Development Director in the administration and enforcement of the provisions of this Ordinance shall be heard by the City Planning Commission. A "Notice of Appeal" in the form of a letter with necessary documentation shall be filed within ten (10) days from the date of the decision with the Economic Development Director outlining the circumstances and the ground of the appeal. The Economic Development Director shall place the Notice of Appeal on the agenda of the Planning Commission meeting. Appropriate fees shall apply.

Upon hearing such appeal the Planning Commission may, in conformance with the provisions of these regulations, reverse or affirm, or may modify, wholly or partially, any order, requirement, decision, or determination of the Economic Development Director and/or his staff.

**RECOMMENDATION:**

Based on the appropriateness of the request and the information provided, the Commission may:

- a) Reverse the Staff Decision and Allow the Structure to be Occupied as a Residence;

- b) Affirm the Staff Decision and Not Allow the Structure to be Occupied as a Residence; or
- c) Modify the Staff Decision, wholly or partly.

**ATTACHMENTS:**

1. Applicant's Exhibit 1 – Application
2. City's Exhibit A – Location Map
3. City's Exhibit B – Existing Zoning Map
4. City's Exhibit C – Existing Land Use Map
5. City's Exhibit D – Future Land Use Map

**EXHIBIT #1**

GAUTIER, MISSISSIPPI  
ECONOMIC DEVELOPMENT/PLANNING DEPARTMENT  
PUBLIC HEARING APPLICATION

Public Hearing Number  
CPC 12-26-AP

PERMIT REQUESTED:

<u>TO BE HEARD BY GAUTIER PLANNING COMMISSION:</u>		<u>FEE:</u>
Change in Zoning District	_____	\$300.00
Major Development	_____	No Fee
Home Occupation	_____	\$100.00
Variance (greater than 30%)	_____	\$100.00
Appeal to Staff Decision	<u>  /  </u>	\$100.00
*****		
<u>TO BE HEARD BY ECONOMIC DEVELOPMENT/PLANNING DIRECTOR ON STAFF REVIEW:</u>		<u>FEE:</u>
Home Occupation	_____	\$100.00
Variance (30% or less)	_____	\$100.00

See Attachment for Application Procedure

Name of Applicant: HLV, LLC Tony Luong Tonyluong@gmail.com  
 Name of Business: HLV LLC Phone: 228-326-3389  
 Business Address: 333 Oak Street Mailing Address (if Different): \_\_\_\_\_  
Blacks, MS 39530  
 Reason for request, location and intended use of Property: attached  
(2008 Hwy 90 PID # 82434024,000)

ATTACHMENTS REQUIRED AS APPLICABLE:

- \_\_\_\_\_ 1. Diagram of intended use, showing dimensions and distances of property, building with setbacks, parking spaces, entrances and exits.
- \_\_\_\_\_ 2. Legal descriptions and street address.
- \_\_\_\_\_ 3. A detailed project narrative.
- \_\_\_\_\_ 4. Copy of protective covenants or deed restrictions, if any.
- \_\_\_\_\_ 5. Copies of approvals, or requests for approval, from other agencies, such as, but not limited to, the Mississippi State Department of Health, U.S. Army Corp of Engineers, Mississippi Department of Environmental Quality and Department of Marine Resources.
- \_\_\_\_\_ 6. Any other information requested by the Economic Development/Planning Director and/or members of the Site Plan Review Committee.

Signature of Applicant: Tony Luong  
 Date of Application: 11-20-12

<b>FOR OFFICE USE ONLY</b>	
Date Received <u>11/20/12</u>	Verify as Complete <u>BT</u>
Fee Amount Received <u>\$100.00</u>	
Initials of Employee Receiving Application <u>BS</u>	

Jan 3, 2013  
mfg.

# EXHIBIT #1

HLV, LLC  
Lien Nguyen  
Tony Luong  
333 Oak Street  
Biloxi, MS 39530  
228-326-3389

To whom this concerns,

Our family has a rental house on 3608 Hwy 90 in Gautier, MS. For as long as we have owned the home, we have rented this house out as a residential home. We recently evicted the tenants out of this home recently in the past month. We went to try to get an inspection on the home to turn on power to make repairs. Little that we know, we found out that our residential status of the home was taken away. As stated by Gautier city officials, the home was used a commercial building. And explained to us that if the home is used as a commercial building it will be classified as commercial use and will no longer be classified as residential. This came as a surprise to us because we have no knowledge of this stipulation. We were never informed of this lost of residential status. If we had known this, we would never let the property get to this stage. Also, the tenant were the ones that came to the city and asked for use as a commercial. We never came here as owners and asked for this house to be used as commercial. If anyone has seen or been in this house, it cannot be used as commercial because it looks more of a home and function as a home than it does as commercial. So, therefore, we want to ask the city to grant us a waiver of your stipulation on making this home as commercial. Please let us have a chance to present it to the city council. Thank you for your time.

Sincerely,

Tony Luong  
HLV, LLC