

Staff Response: The Comprehensive Plan states that churches may be permitted as a conditional use in a commercial district with conditions imposed to ensure that the use is compatible with its surroundings

7. Does the proposed use pose a hazardous, detrimental, or disturbing affect, either real or perceived, to present surrounding land uses due to noises, glare, smoke, dust, odor, fumes, water pollution, vibration, electrical interference, or other nuisances? Explain.

Applicant Response: No.

Staff Finding: There is no evidence that the proposed use poses a hazardous, detrimental or disturbing affect to present surrounding uses.

8. Does the use conform to all district regulations for the applicable district in which it is located, or have other provisions been provided for? Explain.

Applicant Response: The church is very small and it will be a place for teaching, learning, counseling, etc. It will not be a nuisance to the area nor will it be loud or distracting. The space is big enough and the acoustics are in place for such a proposal. The church is only a year and half old.

Staff Finding: The proposed use can be made to conform to district regulations with certain conditions.

DETERMINATION OF APPLICABLE LAW:

1. The UDO defines conditional uses as specific uses which are enumerated in each zoning district and which because of their nature are not allowed by right but may be allowed after the required review process. The City may specify certain conditions as necessary to make the use compatible with other uses in the same district. Conditional uses are issued for uses of land and uses designated “Conditional Uses-Major” are transferable from one (1) owner of land to another.

The UDO further defines Conditional Uses-Major as uses that are not allowed by right but require a recommendation by the Planning Commission and the approval of the City Council. Additionally, if the conditional use is transferred to a new owner, the new owner must submit a letter to the Economic Development Director agreeing to the current terms and conditions before a business license may be issued.

2. Conditional Uses-Major require a public hearing before the Planning Commission and approval by the City Council (Section 4.14 of the UDO).

RECOMMENDATION:

Staff finds that the proposed use may be compatible and harmonious with the Community Commercial District and recommends approval with the following conditions:

1. The location shall meet all accessibility requirements for change of occupancy as stated in Section 3409 of the International Building Code. (See Exhibit F.)
2. The physical location of the church and all operations shall be restricted to the location at 4341 Gautier-Vancleave Road, Suite #9. Any further expansion shall require the permit to be amended.
3. Noise levels shall meet the City's noise ordinance. (See Exhibit G.)

CONCLUSION:

The Planning Commission may:

1. Recommend that City Council approve the Conditional Use-Major;
2. Recommend that City Council approve the Conditional Use-Major with changes; or
3. Recommend that City Council deny the Conditional Use-Major.

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
6. City's Exhibit E – Draft Conditional Use-Major Development Order
7. City's Exhibit F – Section 3409 of the International Building Code
8. City's Exhibit G – Section 15-5 City of Gautier's Code of Ordinances

ECONOMIC DEVELOPMENT/PLANNING DEPARTMENT
GAUTIER, MISSISSIPPI

CONDITIONAL USE HEARING APPLICATION

Hearing Number

GPC13-17-CU

<u>TYPE OF REQUEST:</u>		<u>FEE:</u>
Conditional Use – Major	<input checked="" type="checkbox"/>	\$250.00
Conditional Use - Minor	<input type="checkbox"/>	\$250.00

Minor Conditional Use – These uses are not allowed by right. The Economic Development/Planning Director may approve or deny a Minor Conditional Use upon review or he/she may choose to forward the request to the Planning Commission and City Council.

Major Conditional Use – These uses are not allowed by right, and **require** a recommendation by the Planning Commission and approval of the City Council.

Name of Applicant: TONY R BATISTE & TENESHA BATISTE
Name of Business: HOPE COMMUNITY CHURCH MS GULF COAST
Address: SIPGON RIVER MARL GAUTIER, MS 39553 Mailing Address (if different): PO BOX 1993 GAUTIER, MS 39553
Email Address: IOESHA@ATT.NET OR TONY.BATISTE@ME.COM
Phone: 228-218-6253 Cell Phone: 228-990-8350
Reason for request, location and intended use of Property: Church

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 that also addresses the questions on the "Criteria for Approval" page of this application.
- _____ 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 Technical Review Committee.
- _____ 7. Owner's Consent form, if anyone other than 100% sole owner makes application (see attached).

Signature of Applicant: Tony R. Batiste
Date of Application: 7/10/13

FOR OFFICE USE ONLY	
Date Received	<u>7/10/13</u> Verify as Complete <u>BT</u>
Fee Amount Received	<u>250</u>
Initials of Employee Receiving Application	<u>BT</u>

OWNERS CONSENT AND DESIGNATION OF AGENCY – CONDITIONAL USE

I, DRM Properties, LLC, the fee simple owner of the following described property (give legal description):

4341 GAUTIER VANCELEAVE Rd. Ste 9

hereby petition to the City of Gautier to *Grant a Conditional Use of* _____

_____ in _____ and affirm that TONY R. BASTISTE is hereby designated to act as agent on my behalf to accomplish the above.

I certify that I have examined the application and that all statements and diagrams submitted are true and accurate to the best of my knowledge. Further, I understand this application; attachments and fees become part of the official records of the City of Gautier, MS, and are not returnable.

[Signature]
(Owner's Signature)

The foregoing instrument was acknowledged before me this 9 day of July, 2013 by _____, who is personally known to me or has produced _____ as identification and who did take an oath.

Jo E Hollingsworth
(Printed Name of Notary Public)

[Signature]
(Signature of Notary Public)

Commission # _____ My commission expires 9/6/16.

(Notary's Seal)



STATE OF MISSISSIPPI
COUNTY OF JACKSON

LEASE

THIS LEASE AGREEMENT made and executed on the 1st day of July 2013, by and between DRM PROPERTIES, LLC, hereafter called "Lessor" and TONY BATISTE hereafter called "Lessee."

WITNESSETH
ARTICLE I

For and in consideration of the rents herein reserved and the covenants and agreement herein contained, the Lessor does hereby demise, lease and let unto the Lessee, and the Lessee does hereby demise, lease and let from the Lessor, upon terms and conditions hereafter set forth, that certain space in Lessor's building known as "COUNTRY VILLAGE", situated at 4341 Gautier/Vancleave Road in the City of Gautier, County of Jackson, State of Mississippi. The property hereby leased is identified as Suite #9. To have and to hold the above described premises, and all the rights, privileges and appurtenances thereunto belonging and appertaining to the Lessee for and during the term of one (1) year, commencing on the 1st day of August 2013 and ending on the 31st day of July 2014 unless sooner terminated as herein provided.

ARTICLE II
RENTAL RENEWAL OPTION

Lessee agrees to pay unto the lessor the sum of \$800.00 per month as rental for the subject property, the initial rent due on the effective day of this lease and subsequent rent being due on the same day each month thereafter. Lessee shall be liable for a \$25.00 penalty of the rental sum of more than five (5) days late in payment of any rental installment due.

Lessee shall have the option of renewing the lease agreement for and additional three (3) years with the terms, conditions and consideration to be negotiated prior to expiration of the lease term. The option to renew shall be exercised by Lessee giving Lessor written notice of its intent to exercise its option at least ninety (90) days prior to the expiration of this lease.

ARTICLE III
TAXES, INSURANCE & UTILITIES

Lessor shall be responsible for all ad valorem taxes assessed against the land and any buildings or improvements located thereon. Lessee shall be responsible for all ad valorem taxes assessed against furniture, stock, equipment and other personal property located on the premises. Lessee shall pay all privilege, excise and other taxes applicable to the ownership and conduct of its business. Lessor shall keep said land free from all liens or encumbrances that would or might interfere with the Lessee's enjoyment of the use of said property.

Lessor shall insure, at their expense, the buildings and improvements wherein demised premises are situated against loss by fire for the sum of at least \$250,000.00 (two hundred fifty thousand dollars) with loss payable to Lessor and Lessee as their respective interests may appear.

Lessee covenants and agrees to protect, indemnify and hold harmless Lessor for any and all claims, demands, causes of action or suits or expense incident to defense, if any, by Lessor, for injury to or death of persons, or loss or damage to property occurring on the demised premises or on the adjoining sidewalks, parking areas, streets or ways or in any manner growing out of or in connection with Lessee's use of the demised premises. Lessee shall at all times during the term hereof carry and maintain for the mutual benefit of the Lessor and Lessee, general public liability insurance with a company licensed to do business in the state of Mississippi in the minimum amount of \$100,000.00 (one hundred thousand dollars) against all claims from personal injury, death or property damage occurring in, on or about the demised premises or adjacent to the demised premises. On the request of the Lessor to do so, Lessee will furnish to Lessor a certificate of such insurance policy or policies and the expiration date thereof. In case the Lessee shall at any time fail, neglect or refuse to carry and maintain such insurance as hereinbefore provided, then Lessor may at their election obtain, procure or renew such insurance and any amounts paid therefore by Lessor shall be so much additional rent due from Lessee to Lessor and shall be a demand obligation owing to Lessor.

Lessee shall pay all utilities and service fees assessed to the leased premises including, but not limited to, natural gas, propane, water, sewerage, electricity, telephone and garbage.

Lessee agrees to install its own flooring, if desired, in the leased premises at Lessee's expense.

ARTICLE IV
CARE AND USE OF PREMISES

Lessee has inspected the demised premises and the improvements thereon, and finds them to be in a safe, satisfactory and acceptable condition. Lessee will not use or permit any person to use the demised premises or any part thereof for any purpose in violation of the laws of the United States and/or the state of Mississippi, or the ordinances of the city of Gautier, Mississippi. Lessee will keep the premises in a clean and wholesome condition and will comply at all times with all lawful health and police regulations and will keep the demised premises, the improvements thereon, and the area adjacent thereto in a safe, secure and attractive condition.

An appropriate sign at the entrance of the property will be maintained by the Lessor. Lessee shall be responsible for their own sign being produced and installed. Lessee shall not erect any signs or placards on said premises without first obtaining written permission from Lessor. Lessor may remove any objectionable signs or placards at Lessee's expense.

Lessee shall be assessed, in addition to the rental, the sum of \$00.00 per month to maintain and clean adjacent and adjoining parking lot. Lessee shall be responsible for keeping the area around their entrance in a neat and clean appearance.

Lessee shall be responsible for all routine maintenance including, but not limited to, items such as air conditioning filters, light bulbs, plumbing and electrical systems, however, the normal wear and tear and normal replacement of equipment shall be the responsibility of the Lessor.

ARTICLE V
IMPROVEMENTS, SUBLETTING, MAINTENANCE & REPLACEMENTS

Lessee shall have the right to develop and improve said premises in such a manner as is consistent with the operation thereon of a lawful business and with the lawful use of said premises. Any such development or improvement shall be at the expense of the Lessee.

Lessee shall have the right to remove Lessee's additions, alterations and improvements to the realty which shall not be affixed to the realty as to be immovable without substantial damage, for a period of ten (10) days following termination of this lease. In the event of the removal of said additions, alterations and improvements, Lessee shall restore the demised premises to the condition prior to the installation of said additions, alterations and improvements. All additions, alterations and improvements not so removed or subject to removal shall be the property of the Lessor.

Lessee shall have the right to manage its occupied premises, but may not assign or sublet this lease without the prior written consent of the Lessor and said consent shall not be unreasonably withheld or delayed. By accepting any assignment of this lease, any interest therein, or any part thereof, the assignee shall stand in place and stead of the Lessee

ARTICLE V continued...

herein and all of the terms and conditions of this lease agreement shall apply to such assignment, agree to keep and perform each and every covenant and obligation herein required to be kept and performed by the Lessee and such assignee shall be and become fully obligated to keep and perform all of such covenants and obligations.

Lessee shall maintain, at its expense, the building and improvements on the demised premises in good repair, order and condition and return same to Lessor in the same condition as when leased, reasonable wear and tear excepted. Lessee shall be responsible for all interior repairs and glass breakage, and for costs incident thereto.

Lessor covenants and agrees that in case of damage to or destruction of any buildings or improvements on the demised premises by fire or casualty, they will promptly repair, restore and rebuild the same as near as possible to the condition it was in immediately prior to such damage or destruction, provided however, that if such destruction shall be substantial and to such extent as to render the premises untenable, then the Lessor shall have the election and option either to rebuild and restore buildings or improvements, or the cancel of this lease, in which event this lease shall terminate as to both parties on the date of such destruction. Further, in the event such damage or destruction is substantial, and to such extent as to render the premises untenable, then the Lessee shall have the election and option to cancel this lease by giving Lessor written notice thereof within ten (10) days of such damage or destruction. In the event Lessor undertakes to rebuild and restore said premises which have been wholly untenable, and Lessee agrees to continue in possession under this lease agreement, the rent herein provided shall be abated during the period of time when Lessee is unable to occupy said premises.

ARTICLE VI WARRANTY OF TITLE, QUIET POSSESSION & MORTGAGES

Lessor will hereby covenant and warrant that they have the right to lease the demised premises and that they have good and marketable title to the demised premises in fee simple, free and clear of all other leases. Lessor further covenants and warrants that the Lessee shall have quiet possession of the demised premises under the terms and conditions of this lease. Lessor may mortgage the leased premises without Lessee's permission. Lessee shall perform any acts necessary to facilitate this right.

ARTICLE VII INDEMNITY FOR LITIGATION

In case the Lessor shall, without fault on its part, be made a party to any litigation commenced by or against Lessee, or relating to this lease or the demised premises, then the Lessee shall and will pay all costs and expenses including attorney fees incurred

ARTICLE VII continued...

by the Lessor in the enforcement of any of the covenants and agreements of this lease and all costs, expenses and attorney fees shall, if paid by the Lessor, be so much additional rent due from Lessee to Lessor.

ARTICLE VIII RE-ENTRY UPON DEFAULT

If Lessee shall make default in the payment of the rent or any part thereof when due as herein provided, or in any of the covenants, agreements, conditions or undertakings herein contained to be kept, observed and performed by the Lessee and default shall continue for thirty (30) days after the notice thereof in writing to the Lessee or: (A) Any proceeding under Bankruptcy Code of the United States is begun by or against the Lessee, and an order of adjudication, or order approving the petition be entered in such proceedings, or (B) A receiver or trustee is appointed for substantially all of Lessee's business and assets or (C) If Lessee shall make assignment for the benefit of its creditor or (D) If Lessee shall vacate or abandon the demised premises, without actively seeking a sub-lessee for the space (having an agreement with a real estate agency, if sufficient), then and in such event it shall be lawful for the Lessor at their election to declare the term hereof ended and to re-enter the demised premises and the buildings and improvement then situated thereon either with or without process of law, and to expel, remove and put out the Lessee and all other persons occupying all or any part of the premises, using such force as may be necessary in so doing, and to repossess and enjoy said premises and all buildings and improvements situated thereon as in first and former state without such re-entry and repossession working a forfeiture to the rents to be paid and the covenants to be performed by the Lessee during the full term of the agreement. However, if the Lessor should lease said property to anyone else during the time in this lease, then Lessee herein shall pay only the difference between the new rentals and the rentals provided in this lease. If the monthly rentals of such new lease are equal to or greater than the rentals provided in this lease, then the Lessee herein shall be relieved of further payment of the rentals provided herein. If default should be made in any covenants, agreements, conditions or undertakings herein contained to be kept, observed and performed by the Lessee other than the payment of rent which cannot, with due diligence be cured within the period of thirty (30) days, and if notice thereof in writing shall have been given unto the Lessee, and if the Lessee, prior to the expiration of thirty (30) days from and after the giving of such notice, shall commence to eliminate the cause of such default and shall proceed diligently and with reasonable dispatch to take all steps and do all work required to cure such default, provided, however, that the curing of any default in such manner shall not be construed to limit or restrict the right of the Lessor to declare said term ended and enforce all their rights and remedies hereunder for any other default not so cured.

The foregoing provision for the termination of this lease for any default in any of its covenants shall not operate to exclude or suspend any other remedy of the Lessor made

ARTICLE VIII continued...

hereunder, and in the event of the termination of this lease as aforesaid, the Lessee covenants and agrees to indemnify and hold harmless the Lessor from any loss arising from such termination and re-entry in pursuance thereof.

ARTICLE IX
SURRENDER & POSSESSION

Whenever the said term herein demised shall be terminated, whether by lapse of time, forfeiture or any other way, Lessee covenants that it will, at once, surrender and deliver up the premises, including buildings and improvements thereon, peaceable to Lessor and Lessee shall return the premises to Lessor in the same condition as when received, reasonable wear and tear excepted, and Lessee shall thereafter remain in possession thereof, it shall be deemed guilty forcible detainer of the premises under the statute, and shall be subject to all the conditions and provisions above named and to ejection and removal, forcibly or otherwise, with or without process of law as above stated.

ARTICLE X
COVENANTS RUN WITH THE LAND

All the covenants, agreements, conditions and undertakings of this lease shall extend and inure to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto, the same as if they were in every case specifically named, and shall be construed as covenants running with the land and, wherever in this lease reference is made to either of the parties hereto, it shall be held to include and apply to, wherever applicable, the heirs, executors, administrators, successors and assigns of such party. Nothing herein contained shall be construed to grant or confer upon any person or persons, firm, executors, administrators, successors and assigns, any right claim or privilege by virtue of any covenants, agreements, conditions or undertakings in this lease contained.

IT IS UNDERSTOOD AND AGREED that this instrument constitutes the entire agreement between the parties hereto and that any changes or alterations hereunder must be made in writing, duly executed by the parties hereto and attached to this instrument.

IN WITNESS WHEREOF, The Lessor and Lessee has duly executed this lease, in duplicate, on the first day of July A.D. 2013.

LESSOR:
DRM PROPERTIES, LLC

David M. Hoge
P.O. Box 960
Ocean Springs, MS 39566

LESSEE:
TONY BATISTE
3131 Village Circle
Ocean Springs, MS 39564
228-990-1660

Tony R. Batiste

**MAJOR CONDITIONAL USE
CRITERIA FOR APPROVAL**

1. Is the proposed use listed in the list of possible Conditional Uses in the particular Zoning District?

2. Describe how the project is compatible with the character of development in the vicinity relative to (a) density, bulk and intensity of structures, (b) parking, and (c) other uses. Please attach parking plan, site plan, architectural rendering or other plans.

We are proposing a small church congregation which will require parking in the parking lot. The Sunday church services will be held early morning on Sundays at 9:00 a.m. which will not interfere with customer shopping because it is not during regular hours. We would be the only tenant open at that time. Wednesday church hours are between 6-7 p.m. Most of the shops will close around 5 with the exception of Country Gentlemen.

3. Will your project negatively affect neighboring property values or pose a real or perceived threat to citizens? Explain.

Absolutely not. Our presence will add new positive life and ministry to the area. The primary objective of the church is to bring souls to Christ. We have a thriving youth ministry therefore this church is a safe haven for the youth and families of the

4. Will your project adversely affect vehicular or pedestrian traffic in the vicinity? Explain.
No. Our congregation is small.

5. Can the proposed use be accommodated by existing or proposed public services and facilities including, but not limited to, water, sanitary sewer, streets, drainage, police and fire protection, and schools? *Yes.*

6. Is the proposed use in harmony with the Comprehensive Plan? Explain how.

Yes, the strategic planning played a vital role in where this church would be birthed. We believe that Gautier is on a world class journey and the plan for the future will be a huge success and one of Jackson County's best assets. Gautier was chosen for its proactive approach in growth and development.

7. Does the proposed use pose a hazardous, detrimental, or disturbing affect, either real or perceived, to present surrounding land uses due to noises, glare, smoke, dust, odor, fumes, water pollution, vibration, electrical interference, or other nuisances? Explain.
No.

8. Does the use conform to all district regulations for the applicable district in which it is located, or have other provisions been provided for? Explain.

The church is very small and it will be a place for teaching, learning, counseling, etc. It will not be a nuisance to the area nor will it be loud or distracting. The space is big enough and the acoustics are in place for such a proposal. The church is only a year and half old.