

**Gautier Planning Commission**

**Regular Meeting Agenda**

**June 02, 2016**

**GPC #16-10-CU**

**New Covenant of Grace Church**

**1412 HIGHWAY 90 CONDITIONAL USE**

**VII. NEW BUSINESS**

**A. QUASI-JUDICIAL**

1. NEW COVENANT OF GRACE CHURCH – 1412 HIGHWAY 90 - REQUEST FOR A CONDITIONAL USE-MAJOR THAT WOULD ALLOW A CHURCH OR PLACE OF WORSHIP IN A C-3 HIGHWAY COMMERCIAL ZONING DISTRICT. (GPC CASE #16-10-CU)

## 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 Planning Commission, 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 Planning Commission, 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. Planning Commission 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:** Chandra Nicholson, Director of Economic Development & Planning

**Date:** May 25, 2016

**Subject:** Conditional Use-Major Permit for New Covenant of Grace Church at 1412 Highway 90 (GPC Case No. 16-10-CU)

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**REQUEST:**

The Economic Development and Planning Department has received a request from W. Calvin Hyde representative of New Covenant of Grace Church, for a Conditional Use-Major Permit that would allow a Church or Place of Worship in a C-3 Highway Commercial Zoning District at 11412 Highway 90, PID #82436365.000. The application fee of \$250 was paid on April 14, 2016. All public notice requirements have been met.

**BACKGROUND:**

The request property is zoned C-3 Highway Commercial.

1. Location: 1412 Highway 90 (See Exhibit A)  
Principal Arterial: Highway 90
2. General features of the proposed project:  
Total Building Area: 1500 square feet  
Site Size: 1.32 Acres  
Year Building Constructed: 1981
3. Potable Water and Wastewater Services: Existing from City
4. The building is existing and was previously used as a church. The last known use of the property was a church. The building was built prior to 2010 when the UDO became effective. The building has been vacant for more than sixty (60) days, so the “grand-fathered” status has expired.
5. Current Zoning (See Exhibit B): C-3 Highway Commercial
6. Current Surrounding Zoning (See Exhibit B): C-3 Highway Commercial/R-3 Mobile Home/C-2 Community Commercial to the South; C-3 Highway

Commercial to the West and North; and C-3 Highway Commercial/R-1 Low Density Residential to the East.

7. Current Surrounding Existing Land Use (See Exhibit C): Commercial-Retail to the North; Commercial Retail/Vacant to the East; Commercial Retail/ Office/ Mobile Home Park to the South; and Office/Vacant to the West.
8. Comprehensive Plan Future Land Use Designation (See Exhibit D): High Impact Commercial

## **DISCUSSION:**

The following addresses the review criteria for a Major Conditional Use outlined in Section 4.17.5 of the UDO.

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

*Applicant: Yes. It has been used for a church in the past.*

*Staff Finding: Yes. A Church or Place of Worship is listed as a Conditional Use-Major in a C-3 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.

*Applicant Response: Yes. The building has been used as a church building in the past. The only relating compatibility with the two adjoining properties is there is no high volume of traffic consistently. The current building design coincides with the other properties since it once housed a printing business. The church in and of itself will not have an adverse effect on the environment.*

*Staff Finding: The proposed use will be located in an existing building and will not further impact the density, bulk and intensity of the structures in the vicinity. Table No. 9 of the UDO establishes minimum parking spaces required for churches as 1 for each 45 sf of GFA of the sanctuary, auditorium, or main place of worship (or 1 per 3 seats). Based on the proposed number of 50 seats the proposed use will need 17 parking spaces, with 1 of those being an ADA accessible space.*

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

*Applicant Response: No. It has been used for a church in the past.*

*Staff Finding: There is no evidence to indicate the proposed use will negatively affect the property values, or cause a detriment to the surrounding properties. There is one establishment close to the proposed church location which sells alcohol, but is approximately 300' away, which is greater than the 100' minimum distance required in commercial districts.*

4. Will your project adversely affect vehicular or pedestrian traffic in the vicinity? Explain.

*Applicant Response: No. Building is located on a service road.*

*Staff Finding: There is no evidence that the proposed church will have any adverse affect on vehicular or pedestrian traffic.*

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?

*Applicant Response: Yes.*

*Staff Finding: The proposed use can be accommodated by existing public services and facilities.*

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

*Applicant: Yes. It has been used as a church before. The proposed use is as stated in the Conditional Use Narrative. There is no Comprehensive Plan for expansion of building by New Covenant of Grace Church.*

*Staff Response: The Comprehensive Plan states that churches may be permitted as a conditional use in a highway 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. It will be a gathering of people to worship.*

*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 use has been conformed to all district regulations in the past. To the best of my knowledge, no! This is the reason for filing the CONDITIONAL USE APPLICATION. Because a church has to have special approval to meet at site location.*

*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 requires 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 Neighborhood Commercial District and recommends approval with the following conditions:

1. The church services/events/meetings shall be limited to 50 occupants at one time.
2. The building façade shall be repaired, painted, and maintained to meet the minimum Property Maintenance and Care section of the Unified Development Ordinance.
3. The property shall be maintained to meet the minimum Property Maintenance and Care section of the Unified Development Ordinance.

4. A parking lot shall be installed that accommodates seventeen (17) parking spaces, one of which is ADA accessible. The parking lot layout and construction shall meet the requirements as set forth in Article VII of the Unified Development Ordinance.
5. Existing business signage which does not comply with the Unified Development Ordinance shall be removed.
6. Within 60 months of issuance of the Major Conditional Use Permit, the owner or applicant shall install one tree every 30' along the south, east, and west property lines up to the front face of the building. Trees to be a minimum of 6' in height at the time of planting or within 60 months (whichever is later).
7. Noise levels shall meet the City's noise ordinance. (See Exhibit E.)
8. The location shall meet all accessibility requirements for change of occupancy as stated in Section 3409 of the International Building Code. (See Exhibit F.)

**CONCLUSION:**

The Planning Commission may:

1. Recommend that City Council approve the Conditional Use-Major with the Conditions listed; or
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. Draft Conditional Use-Major Permit
2. Applicant's Exhibit 1 – Application
3. City's Exhibit A – Location Map
4. City's Exhibit B – Existing Zoning Map
5. City's Exhibit C – Existing Land Use Map
6. City's Exhibit D – Future Land Use Map
7. City's Exhibit E – Section 15-5 City of Gautier's Code of Ordinances (Noise Ord.)
8. City's Exhibit F – Section 3409 of the International Building Code (Accessibility)

GAUTIER, MISSISSIPPI  
 ECONOMIC DEVELOPMENT/PLANNING DEPARTMENT  
 CONDITIONAL USE APPLICATION

Public Hearing Number

GPC#16-10.CU

<u>TO BE HEARD BY GAUTIER PLANNING COMMISSION:</u>		<u>FEE:</u>
Conditional Use - Major	✓	\$250.00
<u>TO BE HEARD BY ECONOMIC DEVELOPMENT/PLANNING DIRECTOR:</u>		<u>FEE:</u>
Conditional Use - Minor	_____	\$250.00

Name of Applicant: W. Calvin Hyde

Name of Business: Church / New Covenant of Grace Phone: 228 547 8952

Property Address: 1412 Highway 90 Church Mailing Address (if Different): \_\_\_\_\_

E-Mail Address: calvin-hyde@hotmail.com

Proposed Use Requiring Conditional Use: Church (Refer to Article V, UDO)

Proposed Location is:  New Build  Existing (with no modifications)  Existing (with proposed modifications)

ATTACHMENTS REQUIRED AS APPLICABLE:

- ✓ 1. Answers to the Criteria for Approval (see attached).
- ✓ 2. Project Narrative (see attached).
- ✓ 4. Diagram of intended use (see attached).
- N/A 4. Copy of protective covenants or deed restrictions, if any.
- N/A 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.
- N/A 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(s): Willie C. Hyde, Jr. Date of Application: 4/14/2016

FOR OFFICE USE ONLY	
Date Received <u>4-14-16</u>	Verify as Complete <u>CW</u>
Fee Amount Received <u>250.00</u>	Initials of Employee Receiving Application <u>RM</u>

OWNERS CONSENT AND DESIGNATION OF AGENT - CONDITIONAL USE

I, ROYCE LUKE, the fee simple owner(s) of the following described property:

Address:	<u>1410 Hwy 90</u>
	<u>1412</u>
	<u>Gautier, MS 39553</u>
Parcel ID No.:	<u>82436365.000</u>

hereby petition to the City of Gautier to *Grant a Conditional Use Major or Minor of* Church or place of worship (state proposed use from Article V of the Unified Development Ordinance) at the above reference property and affirm that W. CALVIN HYDE (name of agent) 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.

Royce B Luke  
(Owner's Signature)

\_\_\_\_\_  
(Owner's Signature)

Notary Information:

The foregoing instrument was acknowledged before me this 13 day of April, 2016 by Addie L. Bang, who is personally known to me or has produced MS. DL. as identification and who did take an oath.

Addie L. Bang  
(Printed Name of Notary Public)

Addie L. Bang  
(Signature of Notary Public)

Commission # 101387. My commission expires Feb 13, 2020.



**CONDITIONAL USE CRITERIA FOR APPROVAL** - Complete either the Major Conditional Use section or Minor Conditional Use Section below. If more room is needed, answers can be provided on a separate sheet of paper.

### MAJOR CONDITIONAL USE CRITERIA FOR APPROVAL

1. Is the proposed use listed in the list of possible Conditional Uses in the particular Zoning District?  
*yes, It has been use for a church in the past*
2. Please 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.  
*Yes, The building has been used as a church building in the past*
3. Will your project negatively affect neighboring property values or pose a real or perceived threat to citizens? Explain.  
*No, It has been use for a church in the past*
4. Will your project adversely affect vehicular or pedestrian traffic in the vicinity? Explain.  
*No, building is located on a service road.*
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, It has been use as a church before,*
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, It will be a gathering of people to worship.*
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 use has been conformed to all district regulations in the past.*

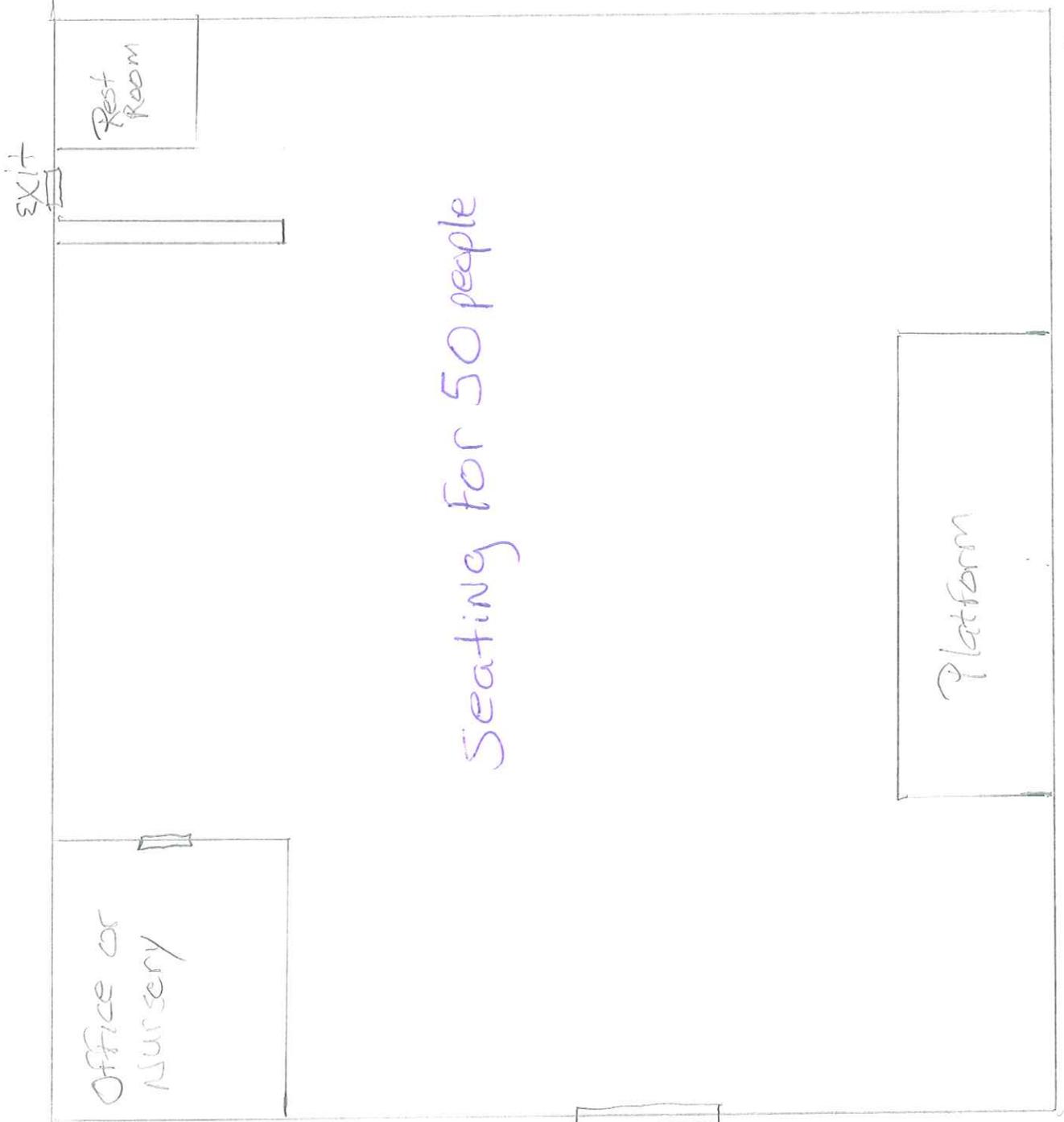
### MINOR CONDITIONAL USE CRITERIA FOR APPROVAL

\* *see Attachment*

1. Is the proposed use substantially compatible with other uses in the area, including factors relating to the nature of its location, operation, building design, site design, traffic characteristics, and environmental impacts? Explain.
2. Will the proposed use be materially detrimental to the health, safety, and general welfare of the public or otherwise injurious to the environment or to the property or improvements within the area? Explain.
3. Is the proposed use consistent with the Comprehensive Plan? Explain how.
4. Is the proposed use in conformance with specific site location, development, and operation standards as required by this Ordinance? Explain.

W

N



Seating for 50 people

Platform

Office or Nursery

Rest Room

EXIT

EXIT

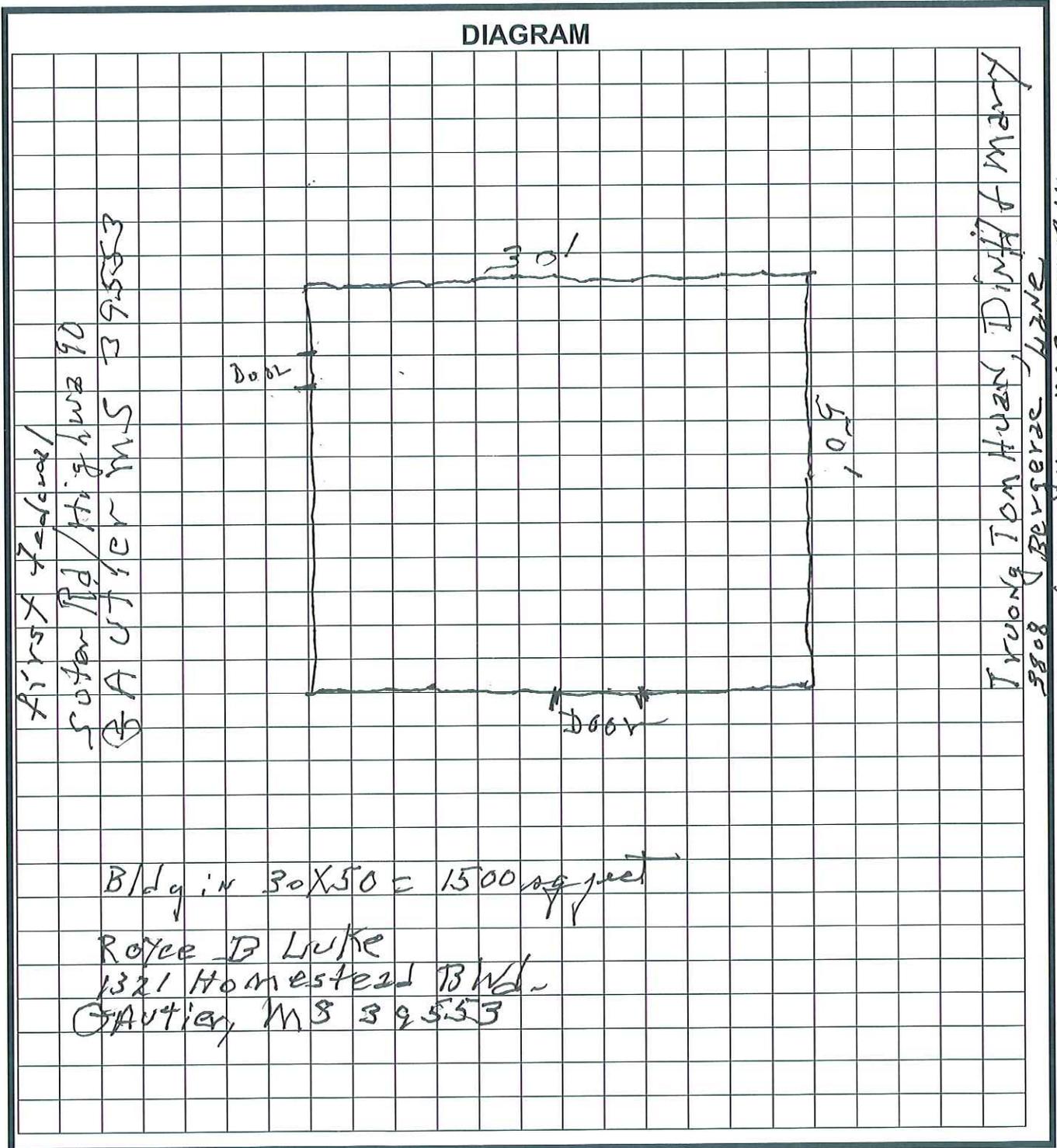
S

E

Set-up from previous Church.  
No change anticipated.

~~1410~~ Hwy 90  
1412

**CONDITIONAL USE DIAGRAM** – Provide a diagram of the project site. In cases where certain requirements such as parking are triggered by aspects of the interior of the building, the interior building layout will need to be provided also. Include location and dimensions of property lines, buildings, parking spaces, outdoor storage areas, outdoor seating areas, signage, landscape areas, driveways, loading/unloading areas, limits of paving, exterior elevations (if changes are proposed), entrance/exit locations. Include the whole site. Use the space below or provide separate drawings. Staff will provide guidance as needed on additional information needed on the diagram.



## CONDITIONAL USE NARRATIVE

The intended use of the property at 1410 Hwy 90 by New Covenant of Grace Church is as follows:

To provide a place of worship and edification for individuals that have freely chosen Jesus Christ as their Lord and Savior.

Services, a.m. and p.m., will be conducted once or more on Sundays as needed. Depending on growth and occupancy limit.

\* A mid-week evening service will be held on Wednesday or Thursday. It is also anticipated that there will be special <sup>services</sup> events that may be held two or more days during the course of a week.

Due to location, service road, of said property church traffic should not effect the normal flow of regular traffic.

\* Special Services may begin on Sunday and go through Wednesday. Or Services may begin on Wednesday and go through Sunday.

## MINOR CONDITIONAL USE CRITERIA FOR APPROVAL

1. The only relating compatibility with the two adjoining properties is there is no high volume of traffic consistently. The current building design coincides with the other properties since it was once housed a printing business. The church in and of itself will not have an adverse effect on the environment.
2. There will be no material whatsoever that will be detrimental to the health, safety, and general welfare of the public, the environment or adjoining properties.
3. The proposed use is as stated in the Conditional Use Narrative. There is no Comprehensive Plan for expansion of building by New Covenant of Grace Church.
4. To the best of my knowledge, no! This is the reason for filing the CONDITIONAL USE APPLICATION. Because a church has to have special approval to meet at site location.

**CITY OF GAUTIER  
CONDITIONAL USE-MAJOR PERMIT  
GPC CASE NO. 16-10-CU**

**NEW COVENANT OF GRACE CHURCH**

**REGARDING PARCEL ID NO: 82436365.000**

The City of Gautier City Council, at its regular meeting held on June 21, 2016, considered the application for a Conditional Use-Major Permit for a church or place of worship as submitted by W. Calvin Hyde, representative for New Covenant of Grace Church. The parcel subject to this Permit is located at 1412 Highway 90, Gautier, Mississippi, 39553. After due public notice, the City Council, having considered the favorable recommendation by the Planning Commission, application, testimony and exhibits presented by the applicant, the report of the City Staff and all other relevant testimony, exhibits and other evidence, pursuant to applicable provisions of the City's Unified Development Ordinance, hereby approves the Conditional Use-Major Permit as follows:

1. This proposed Conditional Use-Major is consistent with the goals, objectives and policies of the City's Comprehensive Plan.
2. This proposed Conditional Use-Major is consistent with the character of the immediate vicinity of the proposed use.
3. The proposed use, classified as a church or place of worship, is permitted as a Conditional Use-Major in the C-3 District.
4. Therefore, the City Council accepts the recommendation of the Planning Commission and approves the application submitted on April 14, 2016 for a Conditional Use-Major Permit.
5. The following additional conditions will ensure that the operation of the proposed conditional use will minimize any detrimental effects on neighboring properties and shall apply to the project:
  - a. The church services/events/meetings shall be limited to 50 occupants at one time.
  - b. The building façade shall be repaired, painted, and maintained to meet the minimum Property Maintenance and Care section of the Unified Development Ordinance.
  - c. The property shall be maintained to meet the minimum Property Maintenance and Care section of the Unified Development Ordinance.

- d. A parking lot shall be installed that accommodates seventeen (17) parking spaces, one of which is ADA accessible. The parking lot layout and construction shall meet the requirements as set forth in Article VII of the Unified Development Ordinance.
  - e. Existing business signage which does not comply with the Unified Development Ordinance shall be removed.
  - f. Within 60 months of issuance of the Major Conditional Use Permit, the owner or applicant shall install one tree every 30' along the south, east, and west property lines up to the front face of the building. Trees to be a minimum of 6' in height at the time of planting or within 60 months (whichever is later).
  - g. Noise levels shall meet the City's noise ordinance. (See Exhibit E.)
  - h. The location shall meet all accessibility requirements for change of occupancy as stated in Section 3409 of the International Building Code. (See Exhibit F.)
6. The City Clerk shall have this permit recorded in the public records of Jackson County and provide the applicant a copy of the permit with the recording information affixed.
7. The Gautier Planning Commission recommended approval of this Conditional Use-Major Permit on June 2, 2016.
8. The City Council adopted this Conditional Use-Major Permit on a recorded vote of \_\_\_\_\_ eyes to \_\_\_\_\_ nays to approve the application of New Covenant of Grace Church, located at 1412 Highway 90, in Gautier, Mississippi, and identified as Jackson County Parcel No. 82436365.000.

June 21, 2016  
Date of Issuance

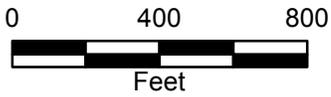
Attest:

\_\_\_\_\_  
Gordon Gollott, Mayor  
City of Gautier, Mississippi  
3330 Highway 90  
Gautier, MS 39553

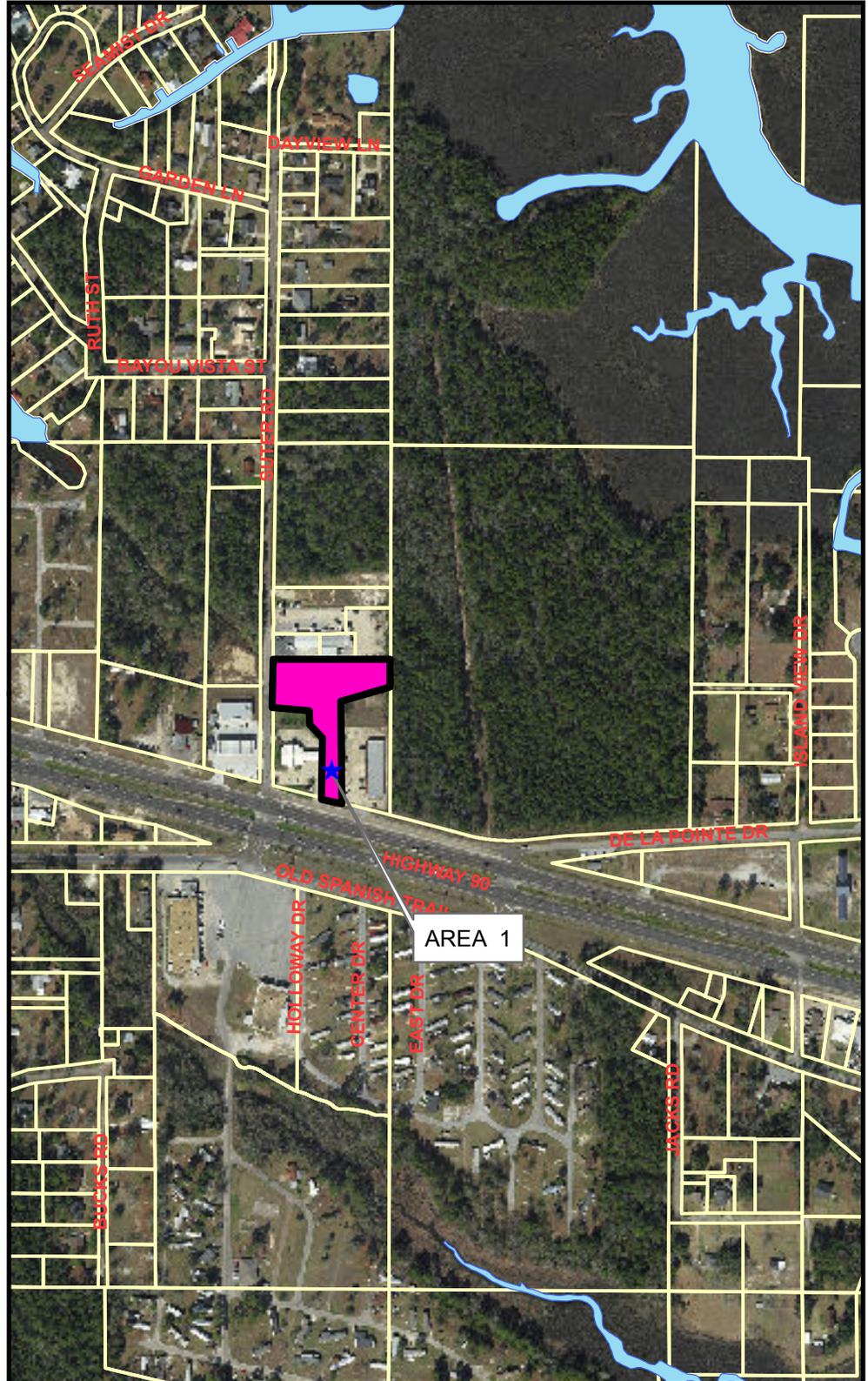
\_\_\_\_\_  
Cindy Russell  
City Clerk

**Location Map**  
**1412 Highway 90**  
**New Covenant of Grace Church**  
**Conditional Use**

City Of Gautier  
Economic Development/Planning

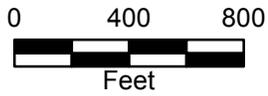


Prepared by the  
City of Gautier  
Planning Division



**Existing Zoning Map**

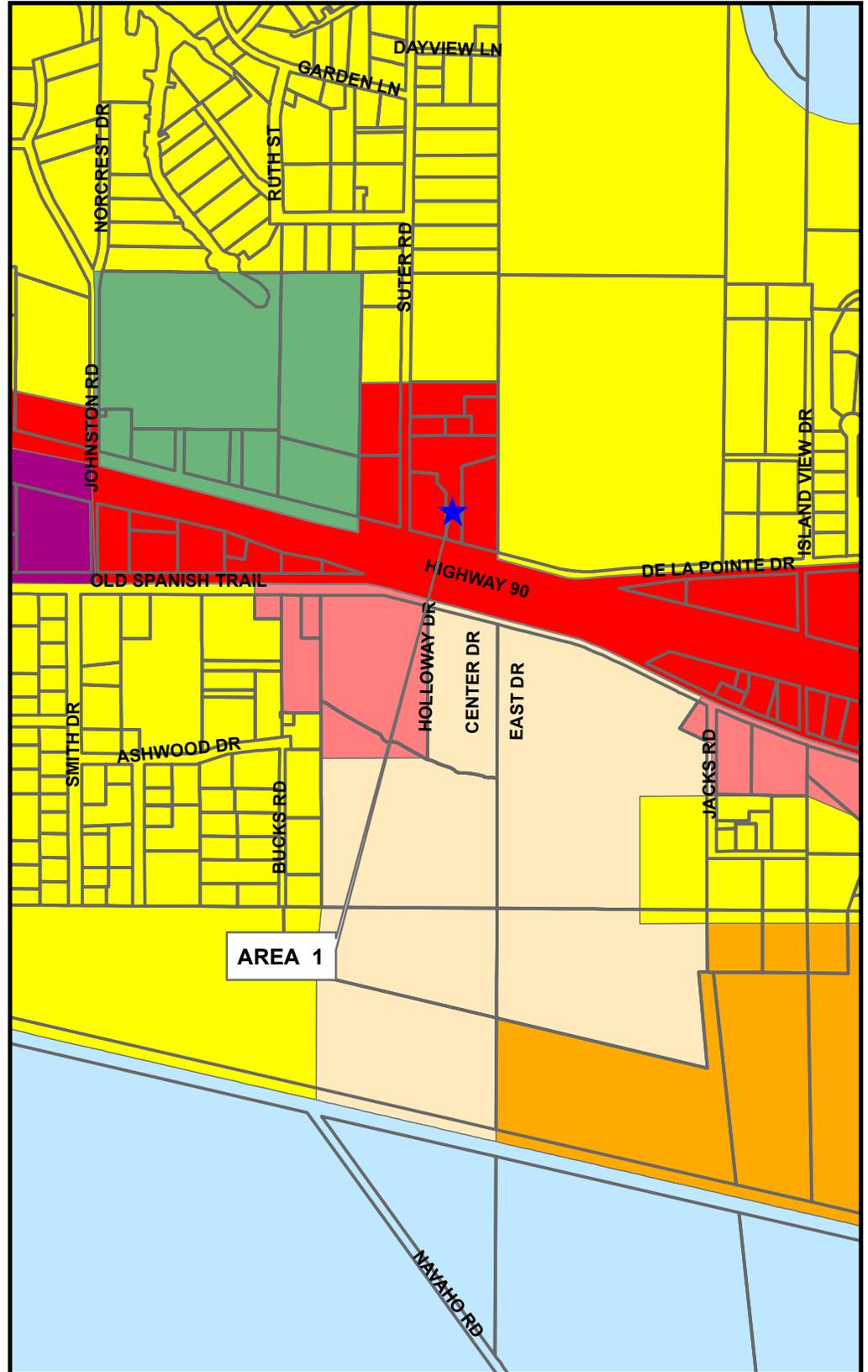
**City Of Gautier  
Economic Development/Planning**



**Prepared by the  
City of Gautier  
Planning Division**

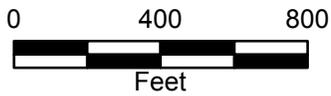
**Legend**

- AG Agricultural
- PL Public/Semi-Public
- PUD Planned Unit Development
- R-1 Low Density Residential
- R-2 Multi-Family Residential
- R-3 Mobile Home District
- MUM
- TC
- MURC-1
- MURC-2
- MURC-MW
- C-1 Neighborhood Commercial
- C-2 Community Commercial
- C-3 Highway Commercial
- I-2 Industrial

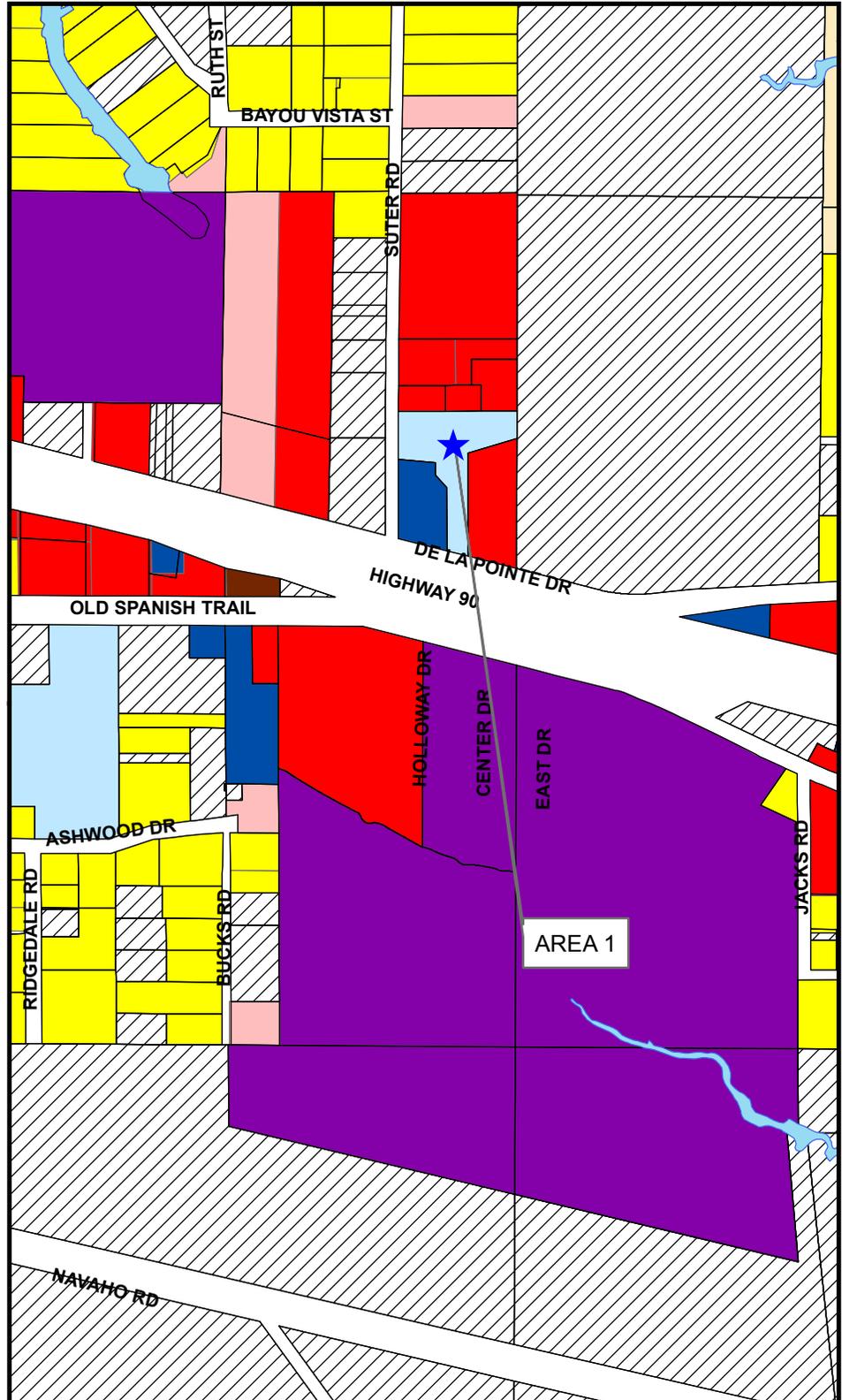


**Existing Land Use Map**

**City Of Gautier  
Economic Development/Planning**



**Prepared by the  
City of Gautier  
Planning Division**



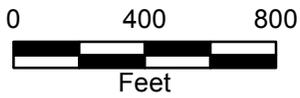
**Legend**

**EXISTING LAND USE**

- Commercial-Retail
- Conservation
- Civic
- Industrial
- Marina/Fish Camps
- High Density Residential
- Mobile Home
- Mobile Home Park
- Medium Density Residential
- Office
- Recreation
- Very Low to Low Density Residential
- Utility
- Vacant

# Future Land Use Map

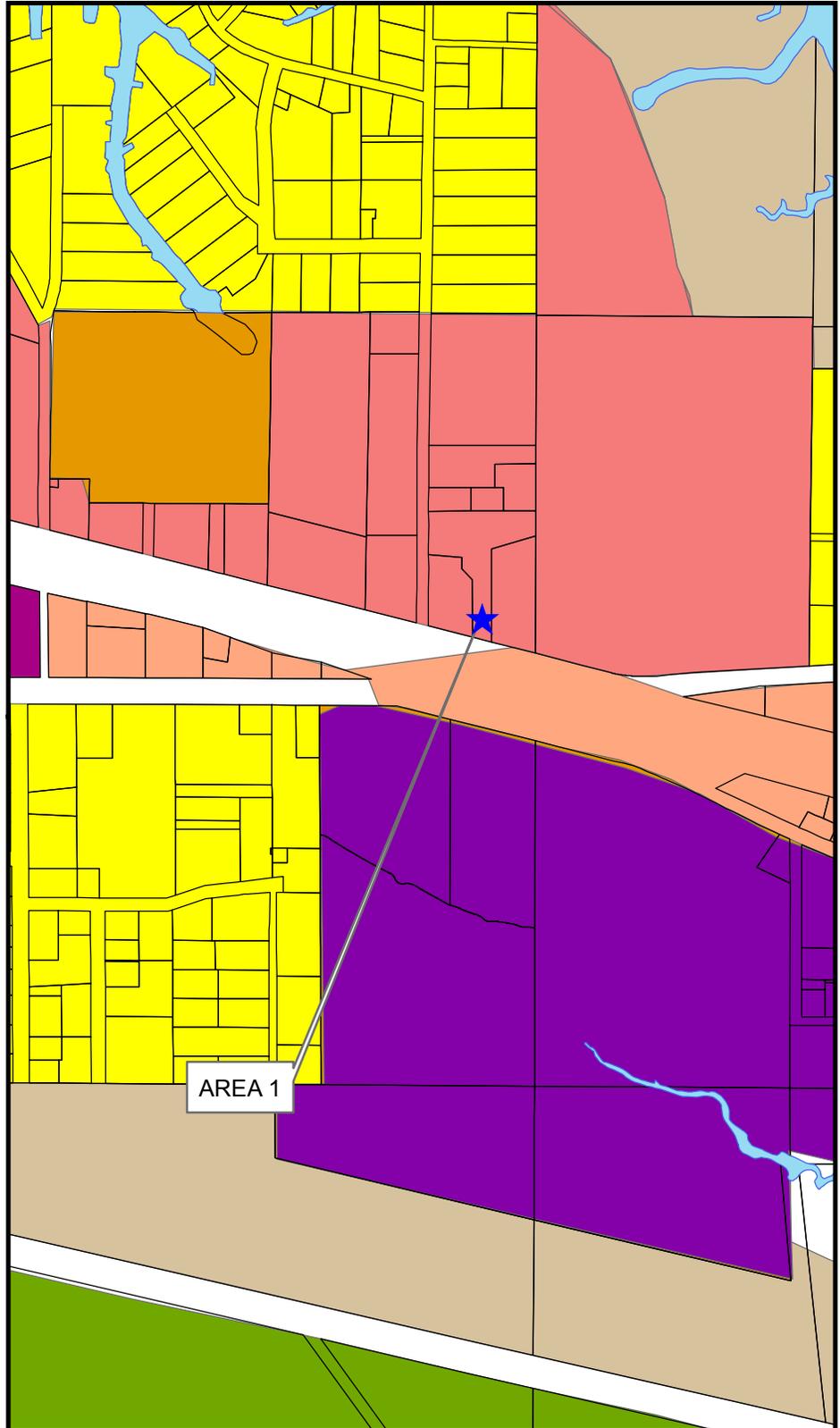
City Of Gautier  
Economic Development/Planning



Prepared by the  
City of Gautier  
Planning Division

## Legend

- Civic
- High Impact Commercial
- Conservation
- High Density Residential
- Industrial
- Low Density Residential
- Medium Density Residential
- Mobile Home Residential
- Low Impact Commercial
- Recreational
- Recreational Commercial
- Regional Scale Commercial
- Mixed Use Residential
- Town Center
- Very Low Density Residential



Sec. 15-5. - Loud music and sounds.

(a)

The operation and use of sound or loudspeaking machines or any equipment for magnifying, amplifying or projecting music, sound or noise on the streets of the city is hereby prohibited.

(b)

It shall be unlawful for any person to use or allow to be used from their place of business, residence or any other location, equipment for magnifying or amplifying and/or enlarging music, sound or noise in an unreasonably loud and large volume, disturbing the public generally and/or citizens and residents in close proximity to such place or places.

(c)

Religious, political, civic or public gatherings, speakings and meetings are specifically excluded from the effect of this section; provided, however, that such meeting or gathering be first approved by the chief of police and a formal written permit be issued by the planning director. Provided further, that any such permit so issued may, by the chief of police or planning director, be recalled and/or revoked at will if in the opinion of the chief of police or planning director the use of such equipment is objectionable or should for any reason not be allowed.

(Ord. No. 97, §§ 1—3, 12-3-96)

40 inches (1016 mm) wide by 36 inches (914 mm) long, located not more than 8 inches (203 mm) below the door.

**3404.5 Opening protectives.** Doors and windows along the fire escape shall be protected with  $\frac{3}{4}$ -hour opening protectives.

#### SECTION 3405 GLASS REPLACEMENT

**3405.1 Conformance.** The installation or replacement of glass shall be as required for new installations.

#### SECTION 3406 CHANGE OF OCCUPANCY

**3406.1 Conformance.** No change shall be made in the use or occupancy of any building that would place the building in a different division of the same group of occupancy or in a different group of occupancies, unless such building is made to comply with the requirements of this code for such division or group of occupancy. Subject to the approval of the building official, the use or occupancy of existing buildings shall be permitted to be changed and the building is allowed to be occupied for purposes in other groups without conforming to all the requirements of this code for those groups, provided the new or proposed use is less hazardous, based on life and fire risk, than the existing use.

**3406.2 Certificate of occupancy.** A certificate of occupancy shall be issued where it has been determined that the requirements for the new occupancy classification have been met.

**3406.3 Stairways.** Existing stairways in an existing structure shall not be required to comply with the requirements of a new stairway as outlined in Section 1009 where the existing space and construction will not allow a reduction in pitch or slope.

**3406.4 Change of occupancy.** When a change of occupancy results in a structure being reclassified to a higher occupancy category, the structure shall conform to the seismic requirements for a new structure.

##### Exceptions:

1. Specific seismic detailing requirements of this code or ASCE 7 for a new structure shall not be required to be met where it can be shown that the level of performance and seismic safety is equivalent to that of a new structure. Such analysis shall consider the regularity, overstrength, redundancy and ductility of the structure within the context of the existing and retrofit (if any) detailing provided.
2. When a change of use results in a structure being reclassified from Occupancy Category I or II to Occupancy Category III and the structure is located in a seismic map area where  $S_{DS} < 0.33$ , compliance with the seismic requirements of this code and ASCE 7 are not required.

#### SECTION 3407 HISTORIC BUILDINGS

**3407.1 Historic buildings.** The provisions of this code relating to the construction, repair, alteration, addition, restoration and movement of structures, and change of occupancy shall not be mandatory for historic buildings where such buildings are judged by the building official to not constitute a distinct life safety hazard.

**3407.2 Flood hazard areas.** Within flood hazard areas established in accordance with Section 1612.3, where the work proposed constitutes substantial improvement as defined in Section 1612.2, the building shall be brought into conformance with Section 1612.

**Exception:** Historic buildings that are:

1. Listed or preliminarily determined to be eligible for listing in the National Register of Historic Places; or
2. Determined by the Secretary of the U.S. Department of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined to qualify as an historic district; or
3. Designated as historic under a state or local historic preservation program that is approved by the Department of Interior.

#### SECTION 3408 MOVED STRUCTURES

**3408.1 Conformance.** Structures moved into or within the jurisdiction shall comply with the provisions of this code for new structures.

#### SECTION 3409 ACCESSIBILITY FOR EXISTING BUILDINGS

**3409.1 Scope.** The provisions of Sections 3409.1 through 3409.9 apply to maintenance, change of occupancy, additions and alterations to existing buildings, including those identified as historic buildings.

**Exception:** Type B dwelling or sleeping units required by Section 1107 are not required to be provided in existing buildings and facilities.

**3409.2 Maintenance of facilities.** A building, facility or element that is constructed or altered to be accessible shall be maintained accessible during occupancy.

**3409.3 Extent of application.** An alteration of an existing element, space or area of a building or facility shall not impose a requirement for greater accessibility than that which would be required for new construction.

Alterations shall not reduce or have the effect of reducing accessibility of a building, portion of a building or facility.

**3409.4 Change of occupancy.** Existing buildings, or portions thereof, that undergo a change of group or occupancy shall have all of the following accessible features:

1. At least one accessible building entrance.

EXISTING STRUCTURES

- 2. At least one accessible route from an accessible building entrance to primary function areas.
- 3. Signage complying with Section 1110.
- 4. Accessible parking, where parking is being provided.
- 5. At least one accessible passenger loading zone, when loading zones are provided.
- 6. At least one accessible route connecting accessible parking and accessible passenger loading zones to an accessible entrance.

Where it is technically infeasible to comply with the new construction standards for any of these requirements for a change of group or occupancy, the above items shall conform to the requirements to the maximum extent technically feasible. Change of group or occupancy that incorporates any alterations or additions shall comply with this section and Sections 3409.5, 3409.6, 3409.7 and 3409.8.

**3409.5 Additions.** Provisions for new construction shall apply to additions. An addition that affects the accessibility to, or contains an area of, a primary function shall comply with the requirements in Section 3409.7.

**3409.6 Alterations.** A building, facility or element that is altered shall comply with the applicable provisions in Chapter 11 and ICC A117.1, unless technically infeasible. Where compliance with this section is technically infeasible, the alteration shall provide access to the maximum extent technically feasible.

**Exceptions:**

- 1. The altered element or space is not required to be on an accessible route, unless required by Section 3409.7.
- 2. Accessible means of egress required by Chapter 10 are not required to be provided in existing buildings and facilities.
- 3. The alteration to Type A individually owned dwelling units within a Group R-2 occupancy shall meet the provision for a Type B dwelling unit and shall comply with the applicable provisions in Chapter 11 and ICC/ANSI A117.1.

**3409.7 Alterations affecting an area containing a primary function.** Where an alteration affects the accessibility to, or contains an area of primary function, the route to the primary function area shall be accessible. The accessible route to the primary function area shall include toilet facilities or drinking fountains serving the area of primary function.

**Exceptions:**

- 1. The costs of providing the accessible route are not required to exceed 20 percent of the costs of the alterations affecting the area of primary function.
- 2. This provision does not apply to alterations limited solely to windows, hardware, operating controls, electrical outlets and signs.
- 3. This provision does not apply to alterations limited solely to mechanical systems, electrical systems,

installation or alteration of fire protection systems and abatement of hazardous materials.

- 4. This provision does not apply to alterations undertaken for the primary purpose of increasing the accessibility of an existing building, facility or element.

**3409.8 Scoping for alterations.** The provisions of Sections 3409.8.1 through 3409.8.12 shall apply to alterations to existing buildings and facilities.

**3409.8.1 Entrances.** Accessible entrances shall be provided in accordance with Section 1105.

**Exception:** Where an alteration includes alterations to an entrance, and the building or facility has an accessible entrance, the altered entrance is not required to be accessible, unless required by Section 3409.7. Signs complying with Section 1110 shall be provided.

**3409.8.2 Elevators.** Altered elements of existing elevators shall comply with ASME A17.1 and ICC A117.1. Such elements shall also be altered in elevators programmed to respond to the same hall call control as the altered elevator.

**3409.8.3 Platform lifts.** Platform (wheelchair) lifts complying with ICC A117.1 and installed in accordance with ASME A18.1 shall be permitted as a component of an accessible route.

**3409.8.4 Stairs and escalators in existing buildings.** In alterations where an escalator or stair is added where none existed previously, an accessible route shall be provided in accordance with Sections 1104.4 and 1104.5.

**3409.8.5 Ramps.** Where steeper slopes than allowed by Section 1010.2 are necessitated by space limitations, the slope of ramps in or providing access to existing buildings or facilities shall comply with Table 3409.8.5.

TABLE 3409.8.5  
RAMPS

SLOPE	MAXIMUM RISE
Steeper than 1:10 but not steeper than 1:8	3 inches
Steeper than 1:12 but not steeper than 1:10	6 inches

For SI: 1 inch = 25.4 mm.

**3409.8.6 Performance areas.** Where it is technically infeasible to alter performance areas to be on an accessible route, at least one of each type of performance area shall be made accessible.

**3409.8.7 Dwelling or sleeping units.** Where I-1, I-2, I-3, R-1, R-2 or R-4 dwelling or sleeping units are being altered or added, the requirements of Section 1107 for Accessible or Type A units and Section 907 for accessible alarms apply only to the quantity of spaces being altered or added.

**3409.8.8 Jury boxes and witness stands.** In alterations, accessible wheelchair spaces are not required to be located within the defined area of raised jury boxes or witness stands and shall be permitted to be located outside these spaces where the ramp or lift access restricts or projects into the means of egress.

**3409.8.9 Toilet rooms.** Where it is technically infeasible to alter existing toilet and bathing facilities to be accessible, an