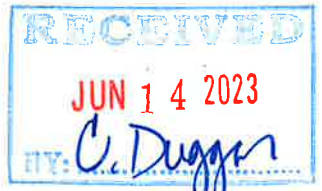


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HARRISON COUNTY ZONING ADMINISTRATION
15309-C COMMUNITY ROAD, GULFPORT, MS 39503 -- Ph. 228-831-3367



ZONING MAP AMENDMENT APPLICATION

CK#
32565

I. ADVALOREM TAX PARCEL NUMBER: 0310P-01-002.001
(Parcel numbers are available from the Harrison County Tax Assessors at 865-4044)

II. GENERAL LOCATION OF PROPERTY INVOLVED: (Give nearby roads)
East Side of Menge Ave, Approximately 310' North of the Intersection of Menge Ave and Bells Ferry Rd

Address of subject property: 7085 MENGE AVE (Tax Assessor says 7100)

III. GENERAL DESCRIPTION OF REQUEST (What are you asking?):
Request to rezone the subject property from E-1 to O-1

V. OWNERSHIP AND CERTIFICATION: I hereby certify that I have read and understand the information contained within the application and that all the answers are true and correct. I certify that, as it pertains to this application, I am in compliance with all applicable Federal, State and local statutes and ordinances. Further, I certify that I agree to allow the Zoning Officer access to my property during normal working hours with or without my presence for any reasonable inspection as it relates to this application. Finally, I certify that I am the owner or one of the owners, of the property that is the subject of this application (each owner must be listed, use a separate sheet as necessary).

LPG Trust

Name of Owner(s)

1256 Kapalama Ct

Address

Diamondhead, MS 39525

City, State Zip Code

228-332-2419

Phone / Email

Larry D. Duggan (Trustee LPG Trust)
Signature of Owner (s) (Required)

Schwartz, Orgler, & Jordan, PLLC

Name of Preparer or Applicant for Permit

2137 E Pass Road

Address

Gulfport, MS 39507

City, State Zip Code

228-388-7441 / jordan@sojlaw.net

Phone / Email

[Signature]
Signature of Preparer or Applicant

**HARRISON COUNTY ZONING ADMINISTRATION
ZONING MAP AMENDMENT APPLICATION SUPPLEMENT**

Re: Parcel No. 0310P-01-002.001/ E-1 to O-1

1. Introduction:

LPG TRUST (hereinafter referred to as “LPG TRUST” or “Owner”), is the owner of Harrison County Ad Valorem Tax Parcel No. 0310P-01-002.001 (“subject property”). LPG TRUST is the true and lawful fee simple owner of the subject property, which property is located in the First Judicial District of Harrison County, Mississippi, being more particularly described on the Warranty Deed recorded as Instrument Number 2016 2331 D-J1, which is attached hereto. The subject property is currently zoned E-1.

The Owner desires to have the subject property rezoned from E-1 to O-1. The subject property currently contains a non-conforming commercial office use. The subject property was developed in 1999, and has acted as a commercial office space for Advanced Business Systems, L.L.C. since that time. Advanced Business Systems, L.L.C. is a computer business that uses the subject property as a commercial office space. The nature of its business is data processing and storage, as well as computing infrastructure and related services. Attached is the property appraisal information from Harrison County. The same reflects that the current commercial building was constructed in 1999. Also attached is the LLC filing information from the Secretary of State’s Office, as well as tax related information from 1999/2000, which evidences that the fact that this business was formed and operating prior to the adoption of the Code. Also attached is the first page of the Harrison County, Mississippi Unified Development Code, which reflects that the same was adopted August 28, 2000. Therefore, there exists a mistake in the original zoning of the property, and rezoning is proper. If approved, the currently dilapidated improvements on the subject property will be remodeled so that the same can contain an insurance office. Renderings for the proposed remodel are attached hereto.

The Supreme Court of Mississippi, in *Faircloth v. Lyles*, as explained: “strict application of the zoning ordinance to the classifications originally assigned [an owner’s] property would prohibit the only use made of the property... The original classification at the time of the ordinance enactment failed to bear a reasonable relation to its actual use.... [T]he classification must rest upon some reasonable link to its actual or adaptable use.” *Faircloth v. Lyles*, 592 So. 2d 941, 944–45 (Miss. 1991) (See *Forbes v. Hubbard*, 348 Ill. 166, 180 N.E. 767 (1932) (finding that the evidence more than supported a finding that a mistake was made in the original zoning ordinance, and the Board's decision to rezone [the] property was not arbitrary or capricious)).

The subject property should have never been zoned E-1, as that did not bear a reasonable relation to its actual use as a commercial office space. An O-1 zoning for the subject property is appropriate, as the Office District exists to provide areas for office and professional buildings compatible with adjacent or nearby commercial and residential environments.

Alternatively, in the event the commission/board finds that there was not a mistake in the original zoning, there has been a change in the character of the neighborhood and there exists public need for the rezoning.

2. How do you describe the neighborhood, the area that will be impacted by this application:

The subject property is surrounded by mixed uses. Immediately to the north and east of the subject property, there is a dirt pit site. Approximately 390ft South of the property is the property owned and operated as a Church. Approximately 300ft to the Northwest is the Oaks Gulf Course. Mixed in with these non-residential uses are different variations of residential zonings. The subject property is accessed by Menge Ave. The proposed use is an insurance office space, which will have minimal impact on the surrounding area.

3. Public Need:

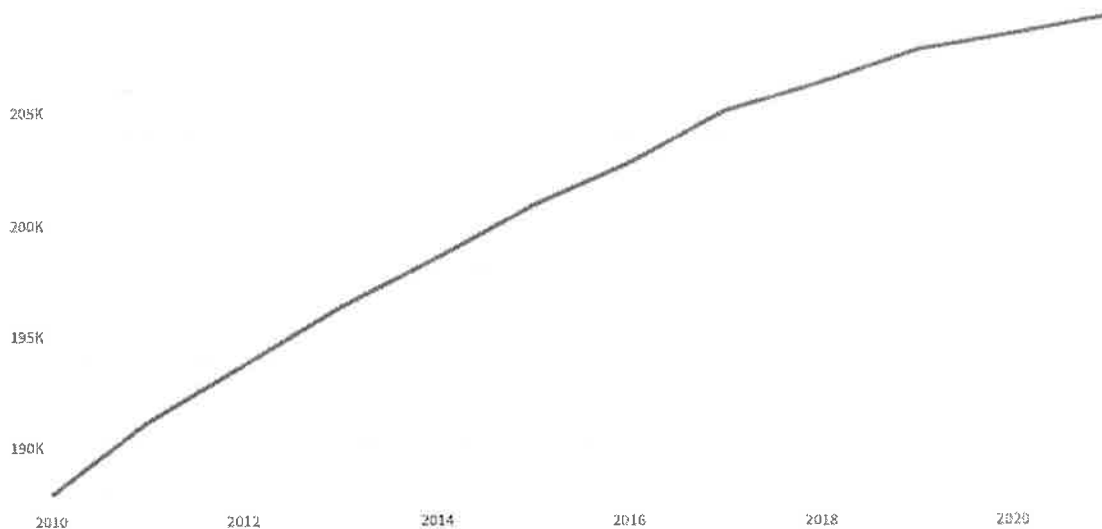
This area of Harrison County lacks commercial office space. The Owner is attempting to sell the subject property as its current use as an office, but is unable to sell the same based on the E-1 zoning classification. With the current mistaken zoning, the property is unable to be sold as it has been used for the last 24 years. The prospective buyer intends to put his insurance office at the subject property, but cannot close on the same until the property is correctly zoned. The prospective buyer has looked extensively in this area of Harrison County for existing office space, and has not been able to find another suitable location. This is further evidence of need in this area of Harrison County for commercial office space.

According to USA FACTS, “[t]he population of Harrison County, Mississippi in 2021 was 209,396, 11.5% up from the 187,868 who lived there in 2010. For comparison, the US population grew 7.3% and Mississippi's population shrank 0.7% during that period.”¹ The estimated population by census.gov states that the population in 2022 is now 211,044, up 1.2% from 2020.²

¹<https://usafacts.org/data/topics/people-society/population-and-demographics/our-changing-population/state/mississippi/county/harrison-county/?endDate=2021-01-01&startDate=2010-01-01>

²<https://www.census.gov/quickfacts/harrisoncountymississippi>

Population in Harrison County



Further, the post-pandemic trends suggest that communities like Harrison County, Mississippi could be the beneficiary of a migration away from more expensive, metropolitan areas.³ “On the whole it is clear that people are moving from more expensive places to less expensive places, which was true before the shock of COVID, but accelerated post-pandemic and became a clearer broad trend.” *Id.* “Different sets of factors appear to explain growth in areas that saw faster population growth. One theory is that vacation towns have seen significant growth in demand, as remote work allows year-round living in places with desirable amenities but fewer skilled job opportunities.” *Id.* The increase in population in Harrison County has led to an increased public need for O-1 properties.

4. Reason for Amendment:

As stated above, the current office use of the subject property predates zoning. Therefore, when zoning was adopted for Harrison County in August of 2000, and the zoning ordinances identified the subject property as E-1, it was a mistake and a manifest error. The property has been used as an office space for 24+ years. Therefore, the same should be rezoned to correct the mistake in the original zoning of the subject property.

Alternatively, the property owner’s request should be granted, as the character of the neighborhood has changed to such an extent to justify reclassification, and there exists public need to justify the rezoning. Included with this application is satellite imagery for the

³<https://eig.org/how-remote-work-is-shifting-population-growth-across-the-u-s/>

surrounding area which ranges from 1997 to 2022. As you can see from the images, this area of Menge Ave has significantly changed over this time. The Oaks Golf Course was developed, the dirt pit was expanded, and the church was developed, all within a half of a mile from the subject property. Additionally, hundreds of new houses have been developed in the area.

The traffic count north of the subject property on Menge Ave has increased from 5100 cars per day in 2011 to 7600 cars per day in 2021. The traffic count south of the subject property on Menge Ave has increased from 4400 cars per day in 2011 to 5500 cars per day in 2021. This further evidences a change in the character of the neighborhood, as there are 1100-2500 more cars per day today on this stretch of Menge Ave than in 2011. When combined with the increased population data above, the traffic count has undoubtedly increased since 2021. Furthermore, the new Menge Avenue Buc-ee's project will certainly lead to an increase in traffic count and commercial development on Menge Ave.

The increased traffic count and population show both change in the character of the neighborhood and public need. With increase population comes an increased need for all uses, including O-1 zoned properties.

5. Findings of the Planning Commission:

(a) The consistency of the proposed amendment with the goals and objectives of the County's Comprehensive Plan.

The existing use predates the County's zoning ordinances and the County's Comprehensive Plan. Therefore, its consistency with the plan is not a factor, as there is a mistake in the original zoning. Notwithstanding this fact, the request is consistent with the County's Comprehensive Plan, as Menge Ave is a major corridor connecting I-10 to the coast, and the Comprehensive plan has identified this area as a controlled growth and/or restricted growth sector.

(b) Existing uses of property within the general area of the property in question.

The subject property is surrounded by mixed uses. To the north and east of the subject property, there is an industrial/commercial dirt pit site. Approximately 390ft South of the property is the property owned and operated as a Church. Approximately 300ft to the Northwest is the Oaks Gulf Course. Mixed in with the commercial and industrial uses are residential uses.

(c) The zoning classification of property within the general area of the property in question.

The neighborhood consists of many uses. The dirt pit to the north/east is in an A-1 zone, which requires a conditional use permit. The church to the south is a commercial use in a R-1 zone, which requires a conditional use permit. The subject property is a non-conforming commercial use in a E-1 zone.

(d) The suitability of the property in question for the uses permitted under the existing classification.

The subject property has been used as an office space and business for 24 years. Therefore, it is suitable for the requested use.

(e) The trend of development, if any, in the general area of the property in question, including changes, which have taken place in its zoning classification.

The surrounding neighborhood has been significantly and continually developed over the course of the last 25 years, as reflected by the attached satellite imagery. The only recent rezonings immediately around the subject property have been related to residential development, but as stated above, mistake in the original zoning does not require trends in development to support the rezoning to the correct the mistake.