

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: June 4, 2012****CASE NUMBER**

5750

APPLICANT NAME

Big Dawg Services

LOCATION5590 Todd Acres Drive
(South side of Todd Acres Drive, 1,466' ± West of
Commerce Boulevard West)**VARIANCE REQUEST****USE:** contractor's storage yard in a B-5 Office-Distribution
District**SURFACING:** aggregate surfacing**TREE PLANTINGS:** reduced frontage tree requirements**ZONING ORDINANCE
REQUIREMENT****USE:** the Zoning Ordinance requires an I-1, Light Industry
District for a contractor's storage yard**SURFACING:** the Zoning Ordinance requires all surfacing
to be asphalt or concrete**TREE PLANTINGS:** the Zoning Ordinance requires 14
frontage trees to be planted**ZONING**

B-5, Office-Distribution District

AREA OF PROPERTY

4.87 ± Acres

**TRAFFIC ENGINEERING
COMMENTS**If any improvements are made to the subject site, they must
conform to Traffic Engineering requirements.**CITY COUNCIL
DISTRICT**

District 4

ANALYSISThe applicant is requesting a Use, Surfacing, and Tree
Planting Variances to allow a contractor's storage yard in a B-5 Office-Distribution District, with
aggregate surfacing, and reduced frontage tree requirements; the Zoning Ordinance requires an I-
1, Light Industry District for a contractor's storage yard, all surfacing to be asphalt or concrete,
and 14 frontage trees to be planted.

The site in question contains two legal lots, and was at one time a fraternal organization lodge. In February 2011, an after the fact permit was obtained for the demolition of the lodge structure, and later that month complaints were received by staff that the site was being used as a scrap or dumping yard.

The Zoning Ordinance states that no variance shall be granted where economics are the basis for the application; and, unless the Board is presented with sufficient evidence to find that the variance will not be contrary to the public interest, and that special conditions exist such that a literal enforcement of the Ordinance will result in an unnecessary hardship. The Ordinance also states that a variance should not be approved unless the spirit and intent of the Ordinance is observed and substantial justice done to the applicant and the surrounding neighborhood.

Variances are not intended to be granted frequently. The applicant must clearly show the Board that the request is due to very unusual characteristics of the property and that it satisfies the variance standards. What constitutes unnecessary hardship and substantial justice is a matter to be determined from the facts and circumstances of each application.

The applicant is a demolition contractor. Their scope of operations include the demolition of structures, the removal of debris, the separation of debris for appropriate recovery, and the removal of the separated debris to the appropriate disposal or recovery locations. The applicant operates across the street from the site in question, but needed additional space for its operation: the site in question was acquired in 2011 and the operation of storing and sorting demolition debris commenced without appropriate zoning approvals.

The use variance is requested due to the existence of similar uses in the vicinity along Todd Acres Road, and the fact that the business is currently located across the street from the site. The Zoning Ordinance requires an I-1, Light Industry District at a minimum for the proposed use.

The City's initiated zoning enforcement in this area on February 17, 2009, and any laydown yards, contractor's storage yards or similar uses existing at that time were given "non-conforming" status. The area was designated as B-5, Office-Distribution District, when the rezoning of the Theodore/Tillman's Corner annexation area took place, as much of the development along and in proximity to Rangeline Road appeared suitable for office-distribution uses, rather than industrial uses. The intent of the B-5 classification is to allow existing non-conforming uses to continue to operate, but to gradually, over time, convert to conforming uses.

As the site is proposed for use as a contractor's storage yard and debris sorting location, the application has requested a surface variance to allow aggregate surfacing. The Zoning Ordinance requires all surfacing to be asphalt or concrete. The applicant states that the site will not have an office, nor any need for employee parking: paved parking would not be in keeping with the proposed use of the site, and that the use of heavy tracked equipment would be at odds with paving the site.

Finally, the applicant is requesting a variance in the number of required trees. A B-5 site is required to provide frontage, perimeter and parking trees, as well as landscape area. Calculations by staff show that the following trees would be required, versus what the applicant is proposing:

	Required	Proposed
Frontage	14	15
Perimeter	47	0
Parking	1	0
Total Trees	62	15
Landscape Area	25,454 square feet	133,719 square feet
Front Landscape Area	15,273 square feet	No information

The applicant has only requested a waiver of the number of frontage trees required, and the submitted site plan depicts 15 trees. The applicant states that the fact that large trucks will be entering and exiting the site will make it difficult to provide all of the required frontage trees, and that it would be a “tight-fit” with some trees unlikely to survive.

The site can accommodate required frontage trees, and can accommodate any other required trees on the site. The site plan submitted does not adequately document any other existing trees on the property, though staff photos indicate several large pines on the site. Additionally, it would appear that landscape compliance could be easily achieved on the site due to a lack of buildings or paving.

Finally, as the site was developed without appropriate permits, it does not comply with any Engineering, Right-of-Way, Urban Forestry, Permitting or Traffic Engineering requirements: approval of variances from Zoning Ordinance requirements will not relieve the applicant from fines or land disturbance review requirements applicable under these other city departments.

It appears the requested variances are not based upon a hardship as defined by the Zoning Ordinance. The use variance request is an after the fact request, and is substantiated due to similar grandfathered uses existing nearby. The surfacing and tree variance requests are tied to the use variance request: the surface variance request only has merit if the use variance is granted, while the tree variance request is without merit.

RECOMMENDATION: Based on the preceding, this application is recommended for denial for the following reasons:

- 1) The use variance is not based upon hardship, but is based upon an after the fact implementation of the use well after the site came under Zoning Ordinance jurisdiction in February 2009;
- 2) The use variance request is based upon proximity to the main business site, and upon the existence of similar non-conforming uses in the vicinity, which were in operation prior to Zoning Ordinance jurisdiction in February 2009;

- 3) The site has been modified with fencing, surfacing and tree removal without appropriate permits or land disturbance review and storm water or landscaping site compliance, thus it does not comply with any Engineering, Right-of-Way, Urban Forestry, Permitting or Traffic Engineering requirements;
- 4) The required surfacing of asphalt or concrete can be provided on the site, per the requirements of the Zoning Ordinance for B-5 districts, as there is nothing to prevent compliant development of the site; and
- 5) The required trees, including frontage trees, and landscape area can be provided on the site due to more than adequate room, lack of paving, and lack of structures or other items preventing development of the site in compliance with the requirements of the Zoning Ordinance.

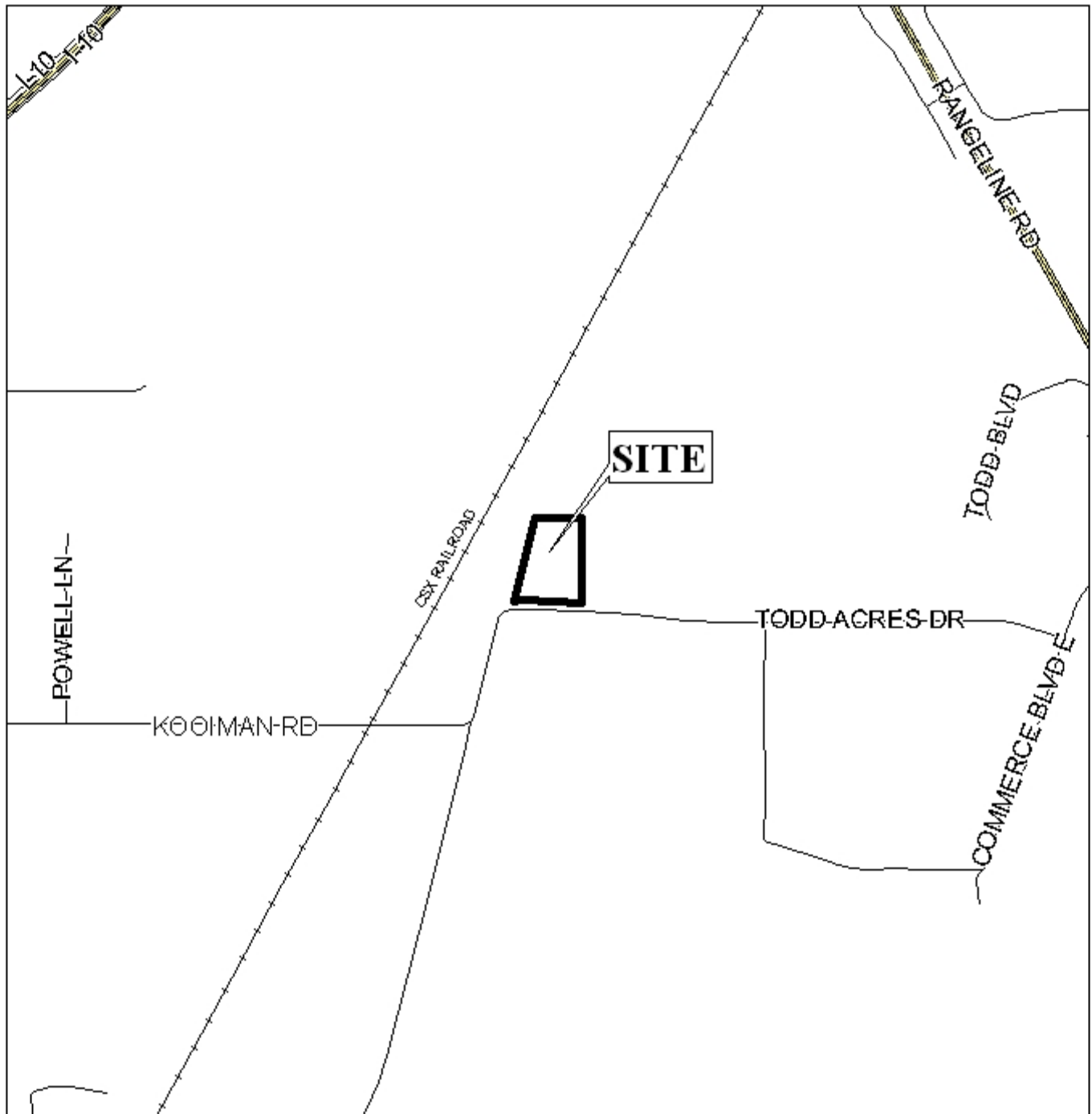
Revised for the July 2nd meeting:

The application was heldover from the June meeting to allow the applicant to submit a site plan illustrating the location, area and type of material being processed and the circulation of vehicles upon delivery of the material. As of June 22nd, no additional information had been received regarding the application.

RECOMMENDATION: *Based on the preceding, this application is recommended for denial for the following reasons:*

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- 3) *The site has been modified with fencing, surfacing and tree removal without appropriate permits or land disturbance review and storm water or landscaping site compliance, thus it does not comply with any Engineering, Right-of-Way, Urban Forestry, Permitting or Traffic Engineering requirements;*
- 4) *The required surfacing of asphalt or concrete can be provided on the site, per the requirements of the Zoning Ordinance for B-5 districts, as there is nothing to prevent compliant development of the site; and*
- 5) *The required trees, including frontage trees, and landscape area can be provided on the site due to more than adequate room, lack of paving, and lack of structures or other items preventing development of the site in compliance with the requirements of the Zoning Ordinance.*

LOCATOR MAP



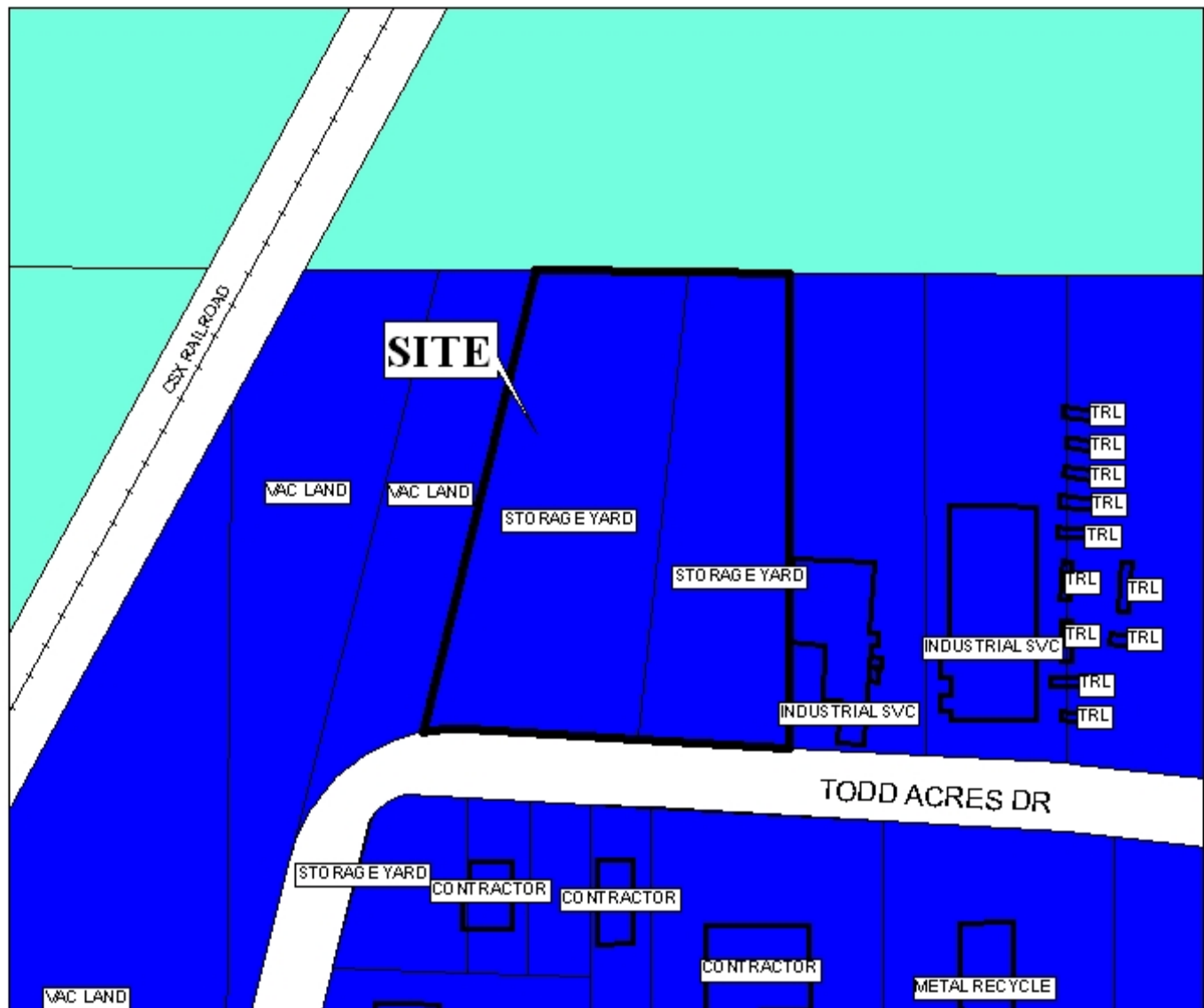
APPLICATION NUMBER 5750 DATE July 2, 2012

APPLICANT Big Dawg Services

REQUEST Use, Surfacing, and Tree Planting Variances



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by industrial land use.

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LEGEND

R-1	R-2	R-3	R-A	R-B	H-B	T-B	B-1	LB-2	B-2	B-3	B-4	B-5	I-1	I-2



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING

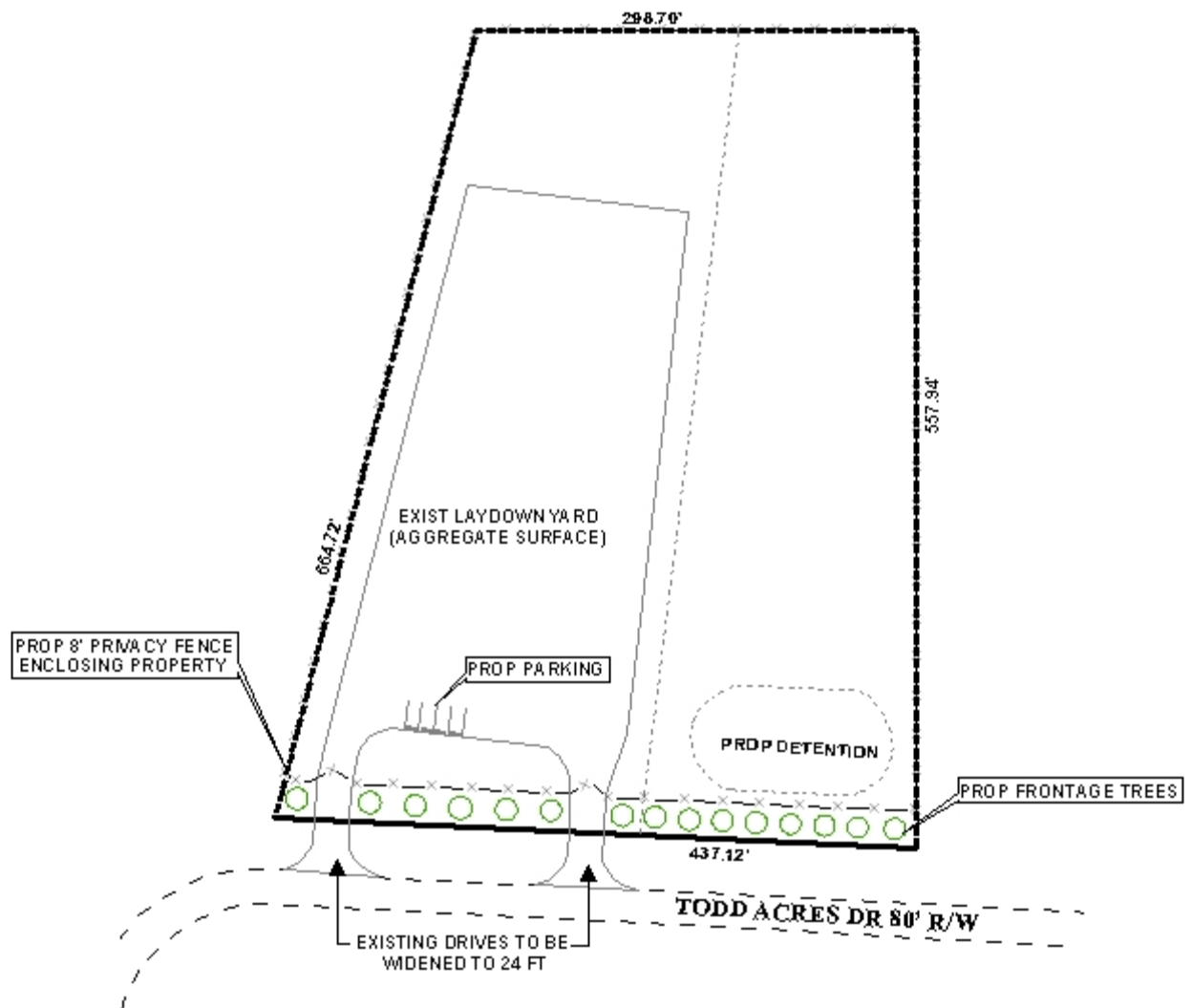


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N
NTS

SITE PLAN



The site plan illustrates the proposed improvements to the existing laydown yard.

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 NTS