

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: August 7, 2017**

<u>CASE NUMBER</u>	6124/6094
<u>APPLICANT NAME</u>	Pan American Engineers, LLC
<u>LOCATION</u>	5383 US Highway 90 West (East side of US Highway 90 West, 30'± North of the West terminus of Halls Mill Road)
<u>VARIANCE REQUEST</u>	SETBACK: Setback Variance to allow a gas pump canopy within 15' of a street front property line in a B-3, Community Business District.
<u>ZONING ORDINANCE REQUIREMENT</u>	SETBACK: Zoning Ordinance requires a minimum 25' street frontage setback in a B-3, Community Business District.
<u>ZONING</u>	B-3, Community Business District
<u>AREA OF PROPERTY</u>	0.6 ± acres
<u>ENGINEERING COMMENTS</u>	No comments
<u>TRAFFIC ENGINEERING COMMENTS</u>	No traffic impacts anticipated by this variance request.
<u>CITY COUNCIL DISTRICT</u>	District 4
<u>ANALYSIS</u>	The applicant is requesting a Setback Variance to allow a gas pump canopy within 15' of a street front property line in a B-3, Community Business District; the Zoning Ordinance requires a minimum 25' street frontage setback in a B-3, Community Business District.

The site came to the Board of Zoning Adjustment on March 6, 2017, and was granted a variance to allow three gas pricers on the canopy, in addition to a freestanding sign. The site was also on the Planning Commission's agenda on March 9, 2017, April 20, 2017, and June 15, 2017. The site obtained a 1-lot Subdivision approval and had a sidewalk waiver denied at the March 9th meeting. The April 20th and June 15th meetings were 1-lot Subdivision applications to alter the

conditions of approval regarding the setback along Halls Mill Road and how required dedication along Halls Mill Road impacted it. After the June 15th meeting, the Planning Commission, the Subdivision was approved requiring dedication to provide 35' from the centerline of Halls Mill Road as well as "retention of the 25' minimum building setback line along Halls Mill Road, with the exception that it follow the line of the canopy encroachment". While this condition of the Subdivision makes an exception to the Subdivision Regulations, a variance is still required to address the requirements of the Zoning Ordinance, and prove a hardship specific to this site. The site plan submitted with the application does illustrate the 25' setback along Halls Mill Road with the exception of the gas canopy encroachment per the Planning Commission approval.

Regarding the current variance application, the applicant states:

1. Purpose of Application:

The Board of Zoning Adjustment application is being submitted to the City for a request to amend the setback requirement on the Halls Mill Road frontage to 15' in lieu of the 25' in the area of the overhead canopy only to allow for construction of canopy over the fuel dispensing pump island.

2. What are the conditions, items, facts or reasons which prevent you from complying with the requirements of the Zoning Ordinance?

As evidenced from the Site Plan provided, keeping the setback at 25' will encroach into the overhead canopy approximately 10' due to the required 10' dedication of property to the City. Adjusting setback within canopy area to 15' will allow for overhead canopy to be constructed as planned with no encroachment within setback.

3. How did the conditions, items, facts or reasons which prevent you from complying with the requirements of the Zoning Ordinance occur?

Site Plan was initially approved by the City then during Subdivision Plat review, the City requested dedication of property (10' strip along Halls Mill Road) for possible future roadway/utility improvements. This right-of-way taking moved the 25' setback into the canopy accordingly. Being that the canopy cannot be shifted any further west to accommodate, a jog of the setback around the canopy is being requested to avoid a 10' encroachment of the canopy. This jog in the setback, as evidenced on the Survey provided was approved by the Planning Commission in meeting on June 15, 2017.

4. How is this property different from the neighboring properties?

The property is similar to adjacent properties other than the fact that the front and rear setback lines are at the proposed canopy structure with no additional room to shift these items to avoid a setback compliance issue.

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 proposed site plan illustrates that the proposed gas canopy extends from the minimum building setback along U.S. Highway 90 West to the setback along Halls Mill Road, with the exception of the encroachment. While the total encroachment is $117\pm$ square feet, and therefore only a small portion of the $5,568\pm$ square foot canopy, the fact that the canopy will extend into the standard setback may be an indication that the proposed gas canopy is too large for this particular site. The canopy could be reduced in size to fit into the standard setback requirements without the need for a variance. The applicant has not addressed why a smaller canopy size could not be utilized, however, if the justification for such is economic in nature, it is not a valid cause for the variance to be granted.

While the site has most recently been in operation as a title pawn business, the site was operated as a gas station as recently as 2006. The canopy associated with the previous gas station at the site was oriented in a North/South direction instead of East/West as is currently proposed. Furthermore, it appears that based on aerial photographs, while the previous canopy was erected prior to annexation into the City of Mobile, and therefore not subject to Zoning Ordinance requirements, it did not encroach into the setback along U.S. Highway 90 West, nor would it have required any relief from the standard 25' setback along Halls Mill Road, even accounting for any required dedication by the Planning Commission.

It should be noted that variance approvals are valid for 6 months unless a permit has been obtained relating to the work approved. In this instance, the applicant has not been able to obtain any permits due to the outstanding issues relating to the setback; therefore an extension may be necessary to prevent the sign variance from expiring.

The applicant has failed to illustrate that a literal enforcement of the Zoning Ordinance would result in an unnecessary hardship. No justification was presented to the Board as to why the site could not be developed without the need for the encroachment, aside from the dedication requirement of the Planning Commission in connection to the Subdivision Regulations.

RECOMMENDATION
facts for Denial:

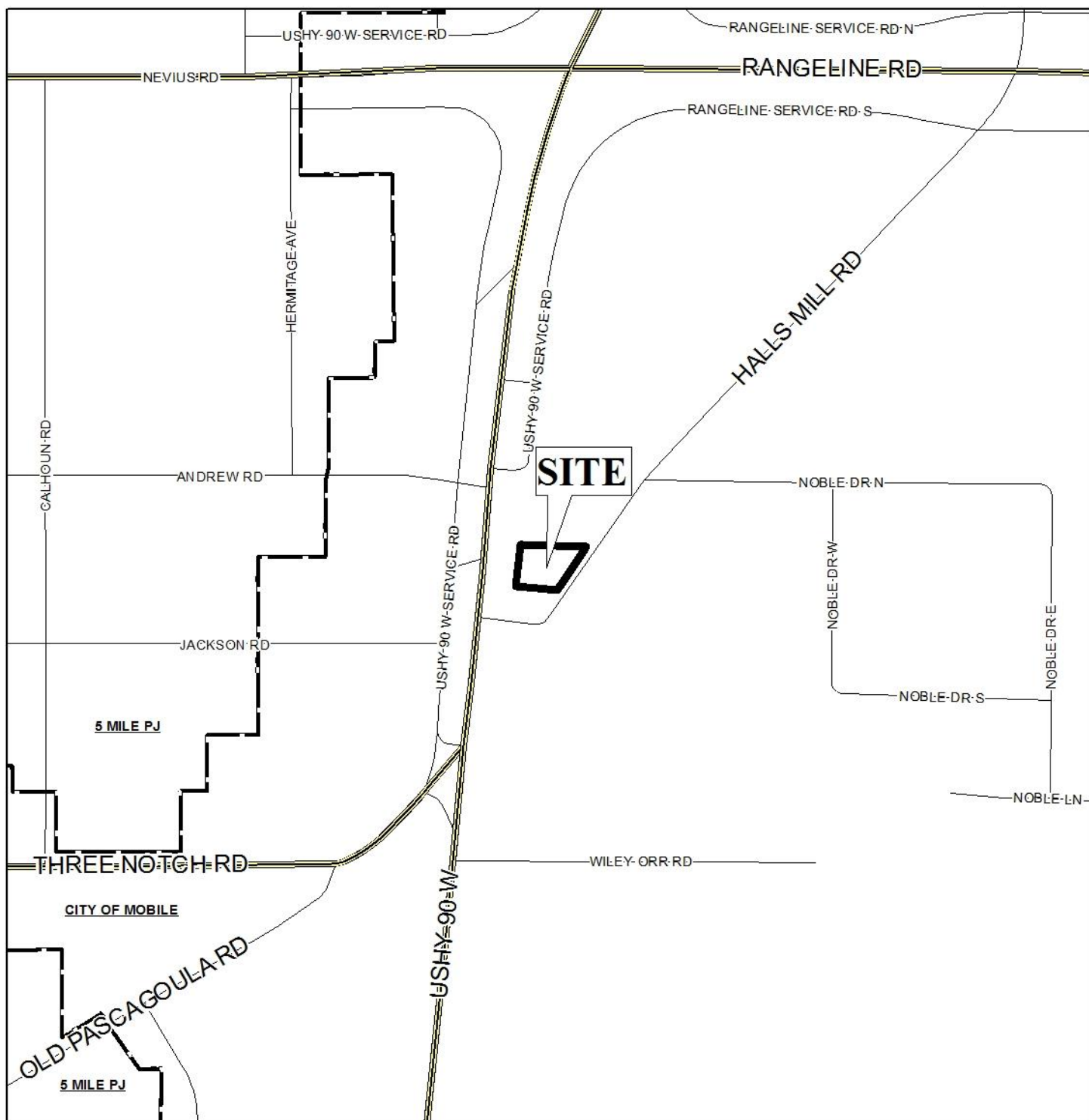
Staff recommends to the Board the following findings of

- 1) allowing the proposed gas canopy to extend into the standard required front setback would be contrary to the public interests inasmuch as other sites which have been redeveloped since annexation have not required variances;
- 2) that special conditions do not exist in preventing the site from complying with front setback requirements in such a way that a literal enforcement of the provisions of the

chapter will result in an unnecessary hardship, as the previously existing gas canopy at the site appears to have fit into the same setback requirements the applicant is held to; and

- 3) that the spirit of the chapter shall not be observed and substantial justice shall not be done to the surrounding neighborhood by granting the variance because the proposed gas canopy could be reduced slightly in size and not encroach into required setbacks, and it appears that economics are the only justification for this request.

LOCATOR MAP



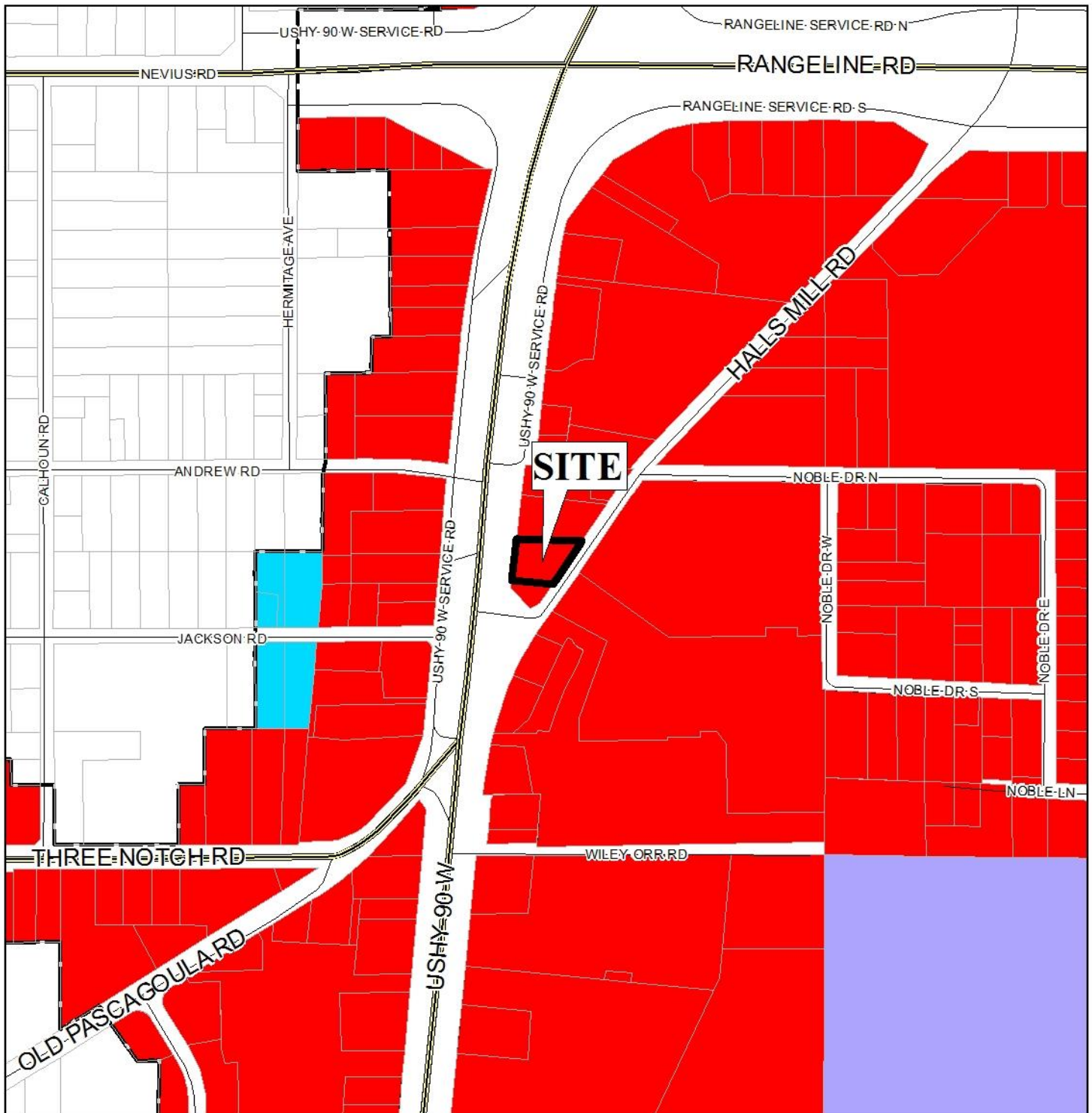
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LOCATOR ZONING MAP



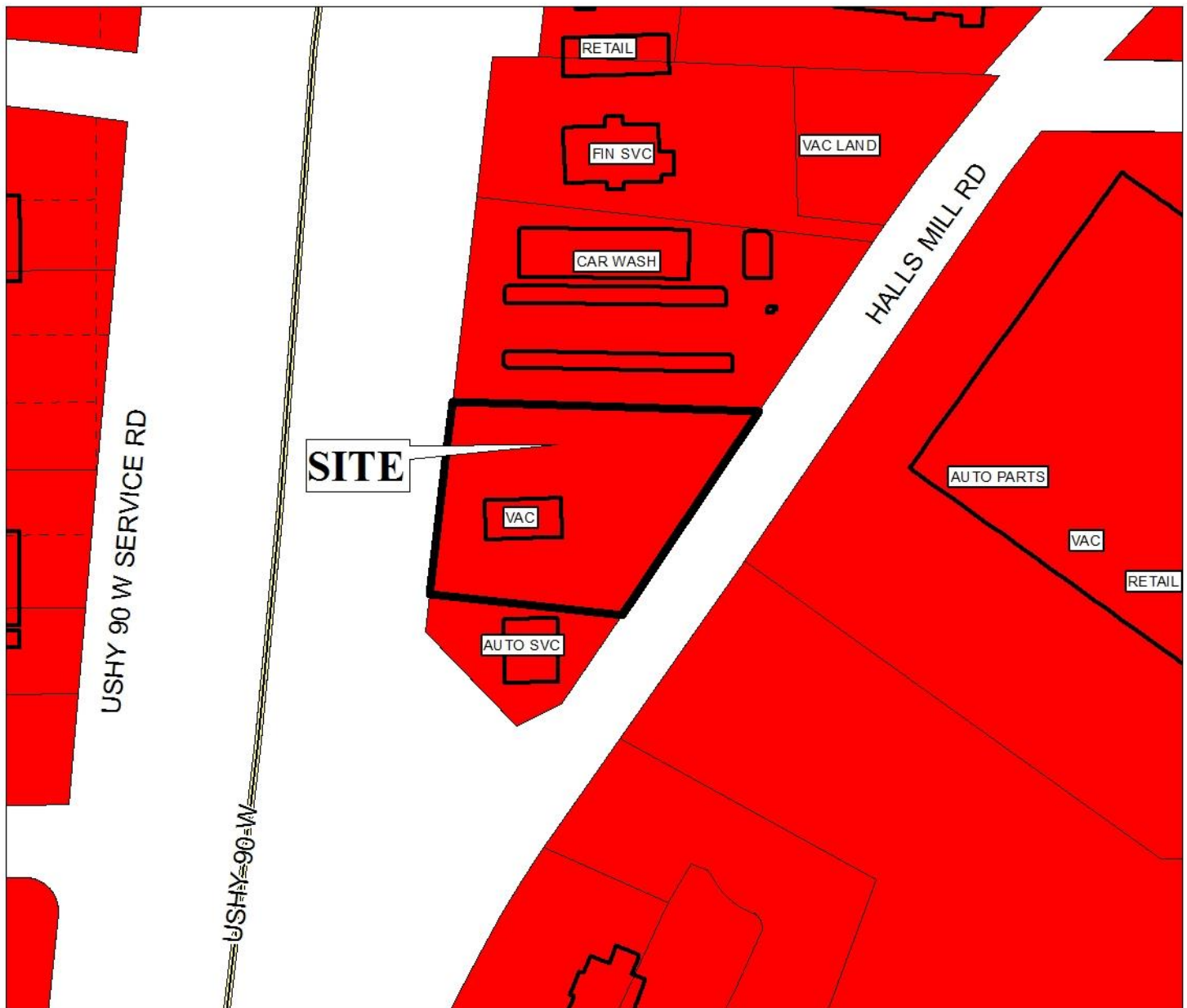
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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by commercial units.

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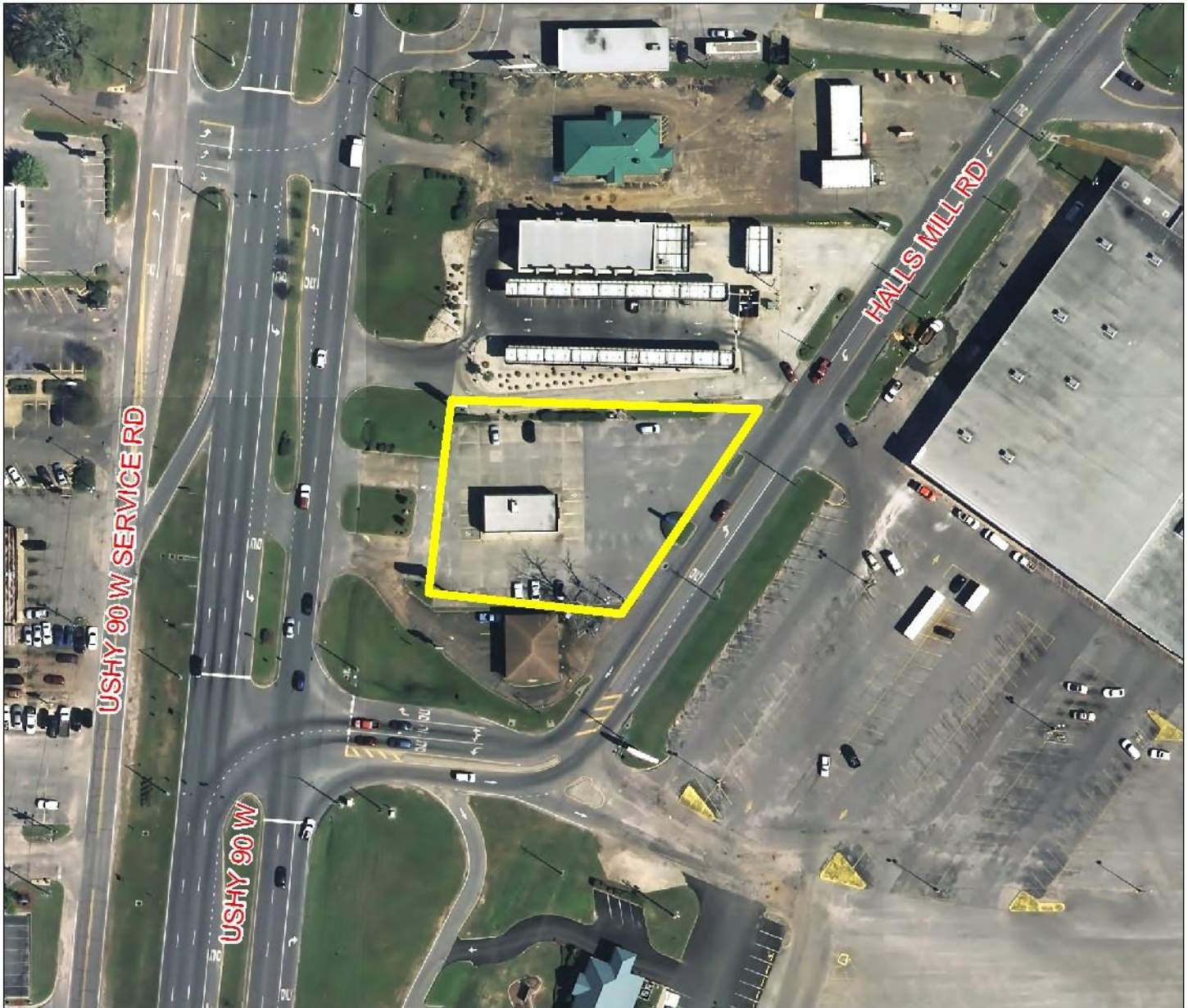
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 R-A	 R-3	 T-B	 B-2	 B-5	 MUN	 SD-WH	 T5.1
 R-1	 R-B	 B-1	 B-3	 I-1	 OPEN	 T3	 T5.2
 R-2	 H-B	 LB-2	 B-4	 I-2	 SD	 T4	 T6



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING AERIAL

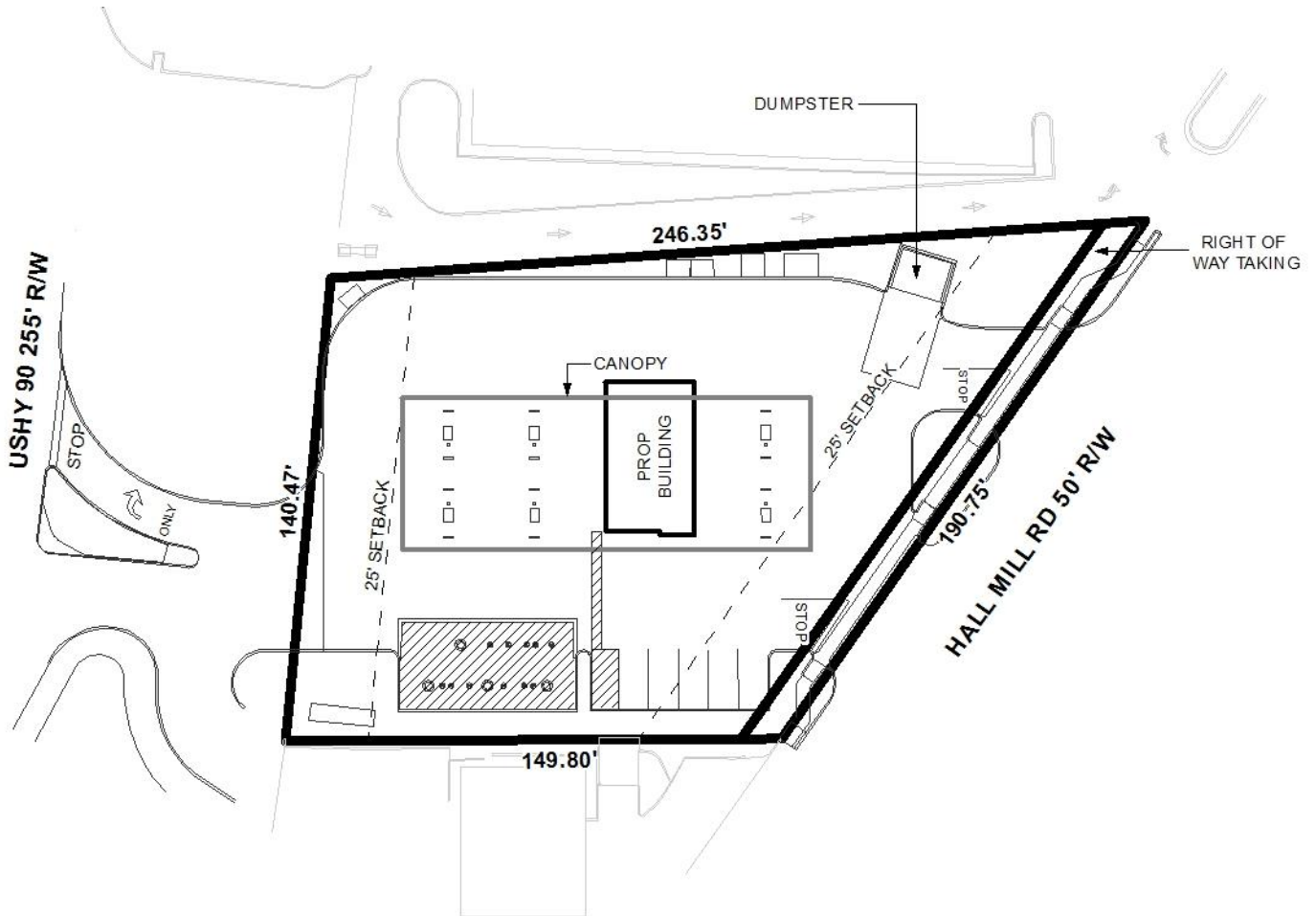


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SITE PLAN



The site plan illustrates the proposed building, proposed parking, setbacks, and dumpster location.

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