

**BOARD OF ZONING ADJUSTMENT  
STAFF REPORT****Date: November 3, 2014****CASE NUMBER**

5930

**APPLICANT NAME**

DAT Holdings, LLC

**LOCATION**

5201 U.S. Highway 90 West  
(East side of U.S. Highway 90 West, 475'± South of Halls  
Mill Creek, extending to the West side of Halls Mill Road  
at Halls Mill Creek).

**VARIANCE REQUEST**

**PARKING SURFACE:** Surface Variance to allow a  
gravel parking area to be used for a car sales lot to remain  
for 24 months in a B-3, Community Business District.

**ZONING ORDINANCE  
REQUIREMENT**

**PARKING SURFACE:** The Zoning Ordinance requires a  
car sales lot to be paved in asphalt, concrete, or an  
approved alternative paving surface in a B-3, Community  
Business District.

**ZONING**

B-3, Community Business District

**AREA OF PROPERTY**

5.6± Acres

**ENGINEERING****COMMENTS**

If the Variance is approved as requested the applicant will  
need to have the following conditions: Submit and receive a Land Disturbance Permit for the  
proposed site development. Submit a ROW Permit for any work within the Public ROW (US  
Highway 90).

**TRAFFIC ENGINEERING****COMMENTS**

Based on the location of the concrete weir, concrete ditch  
and drainage within the driveway access, the driveway will need to be modified to remove the  
conflict. If an alternative surface is approved, any required parking should be delineated with  
curb stops. An ADA accessible route from handicap spaces to the building should also be  
provided.

**CITY COUNCIL  
DISTRICT**

District 4

**ANALYSIS**

The applicant is requesting a Surface Variance to allow a  
gravel parking area to be used for a car sales lot to remain for 24 months in a B-3, Community

Business District; the Zoning Ordinance requires a car sales lot to be paved in asphalt, concrete, or an approved alternative paving surface in a B-3, Community Business District.

The site was developed prior to being annexed in 2009, and currently has some gravel surfacing. The applicant states “This application is being made to defer the placement of asphalt pavement on existing crushed stone for 24 months and to request a sidewalk waiver”. The submitted site plan has the proposed parking area noted as “required asphalt paving”. It should be noted that sidewalks are a requirement of the Subdivision Regulations; therefore an application should be made to the Planning Commission to request the requirement be waived.

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 reason aggregate is not an approved surface by right in a B-3, Community Business District is because of the possibility of the aggregate shifting onto the right-of-way and adjacent properties via tires, parking spaces are not readily delineated, and mobility of customers walking through the site is impaired. In previous cases where the basis for a Parking Surface Variance has been the fact that tracked or large off-the-road-tired construction equipment or heavy object storage could adversely impact the surface due to crushing and/or chipping, a surface variance has been justified. However, there has been no mention of such by the applicant in this case.

It should also be pointed out that an aggregate surface may not comply with the accessibility requirements of the 2009 International Building Code and by reference, the 2003 ICC/ANSI A117.1. The surfacing also may not meet 2009 International Fire Code fire apparatus access requirements.

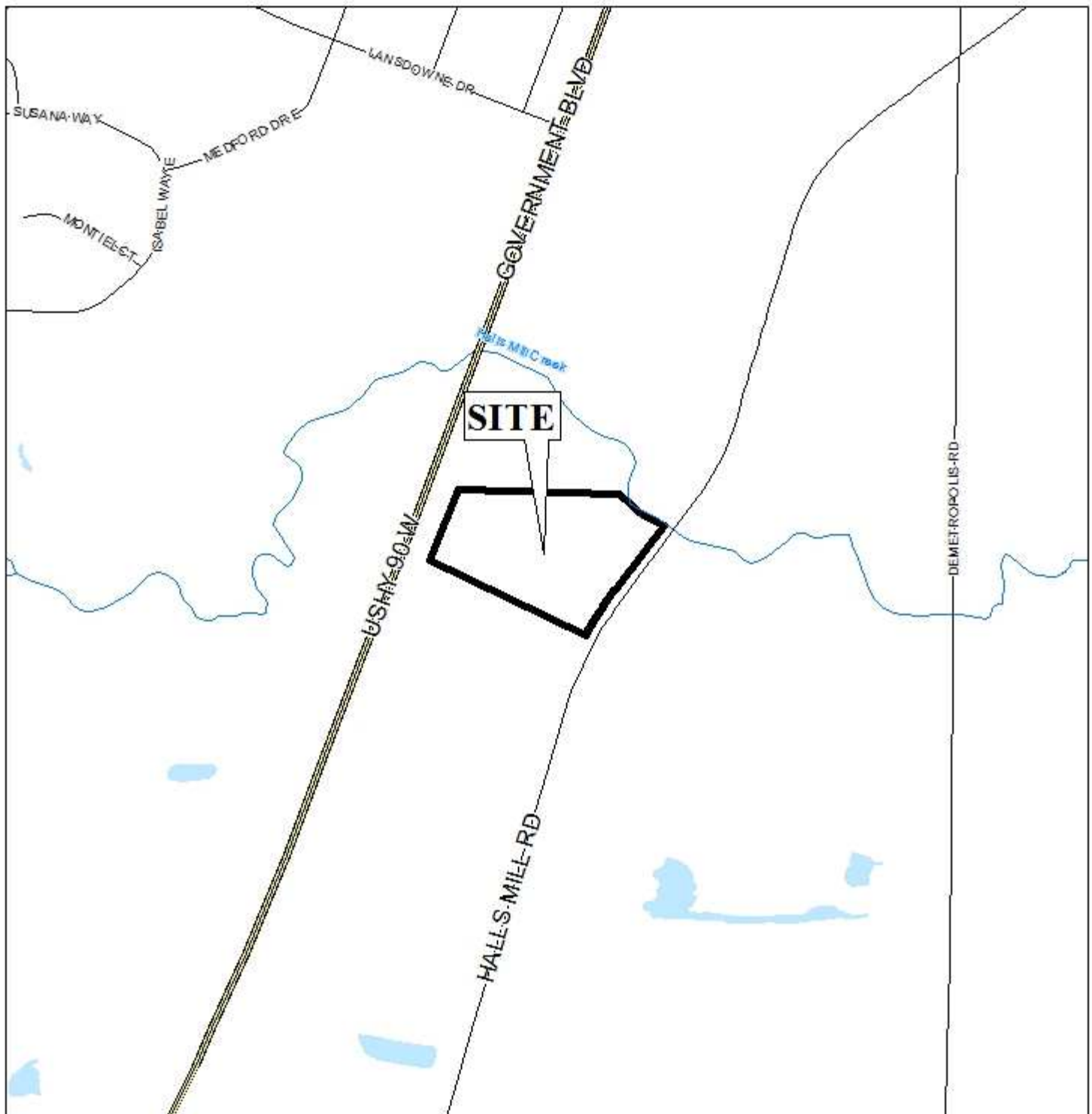
It should be noted that the subject property is split zoned, with a Northeast corner of the site fronting Halls Mill Road being zoned R-1, Single-Family Residential. If the variance is approved, rezoning and subdivision applications should be made to the Planning Commission before any building permits are issued.

The applicant has not illustrated that a hardship would be imposed by a literal interpretation of the parking requirements. The applicant simply wishes to open a car sales lot on the existing gravel parking lot, and pave the site later. The Board should consider this application for denial.

**RECOMMENDATION:** Based upon the preceding, staff recommends to the Board the following findings of facts for denial:

- 1) approving the variance request will be contrary to the public interest in that it is contrary to Section 64-6.A.3.a. of the Zoning Ordinance pertaining to surfacing parking lots with concrete, asphaltic concrete, asphalt or alternative parking surface;
- 2) special conditions regarding the use of the property, or the property itself, do not exist such that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship; and
- 3) 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 it will limit site accessibility for the mobility challenged, and, for fire apparatus, and because other nearby businesses developed since annexation into the City have complied with the surfacing requirements of the Zoning Ordinance and no other Surface Variances have been granted within the area.

# LOCATOR MAP

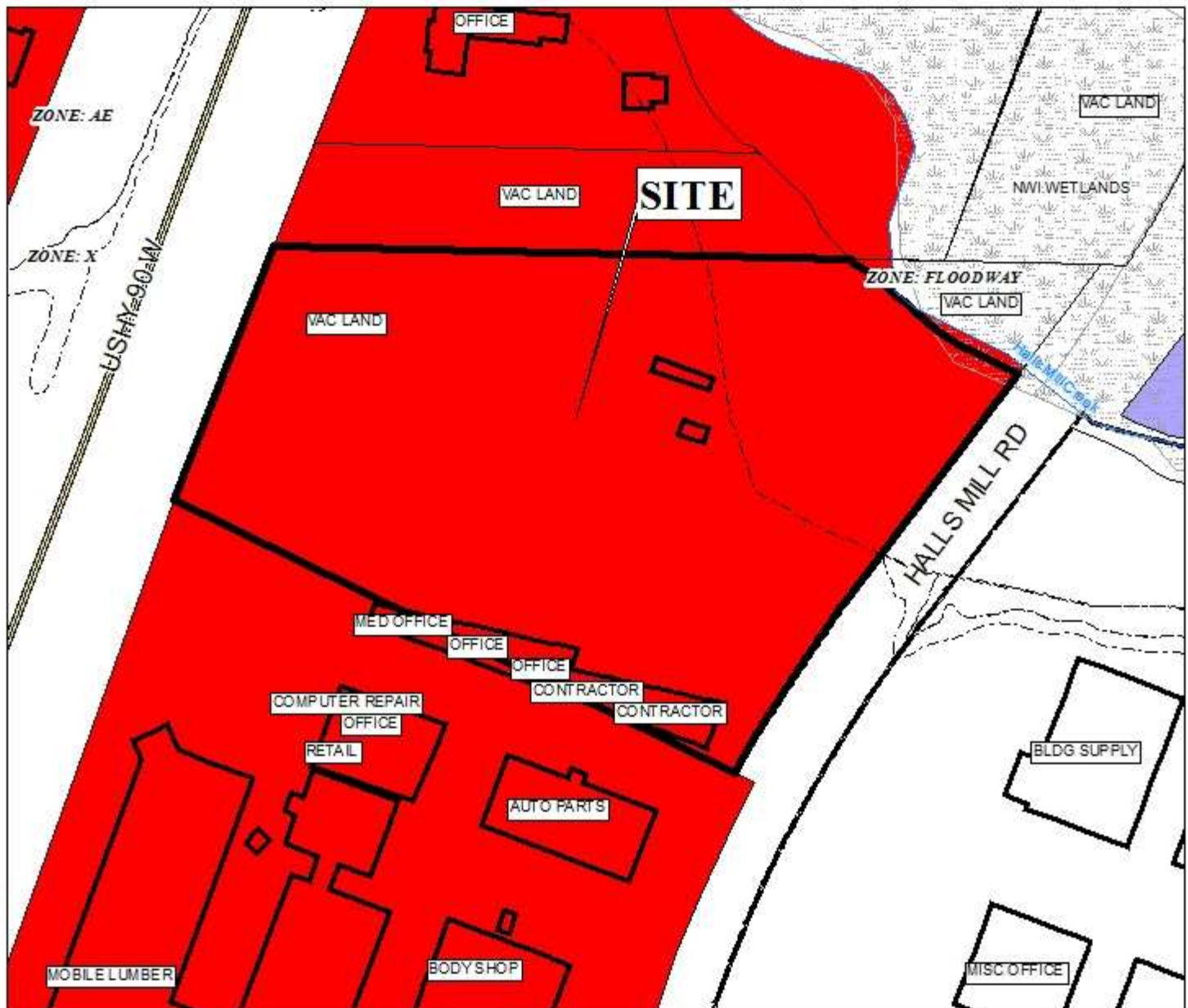


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APPLICANT DAT Holdings, LLC  
REQUEST Surface Variance



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## VICINITY MAP - EXISTING ZONING



The site is surrounded by commercial units.

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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





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## VICINITY MAP - EXISTING ZONING

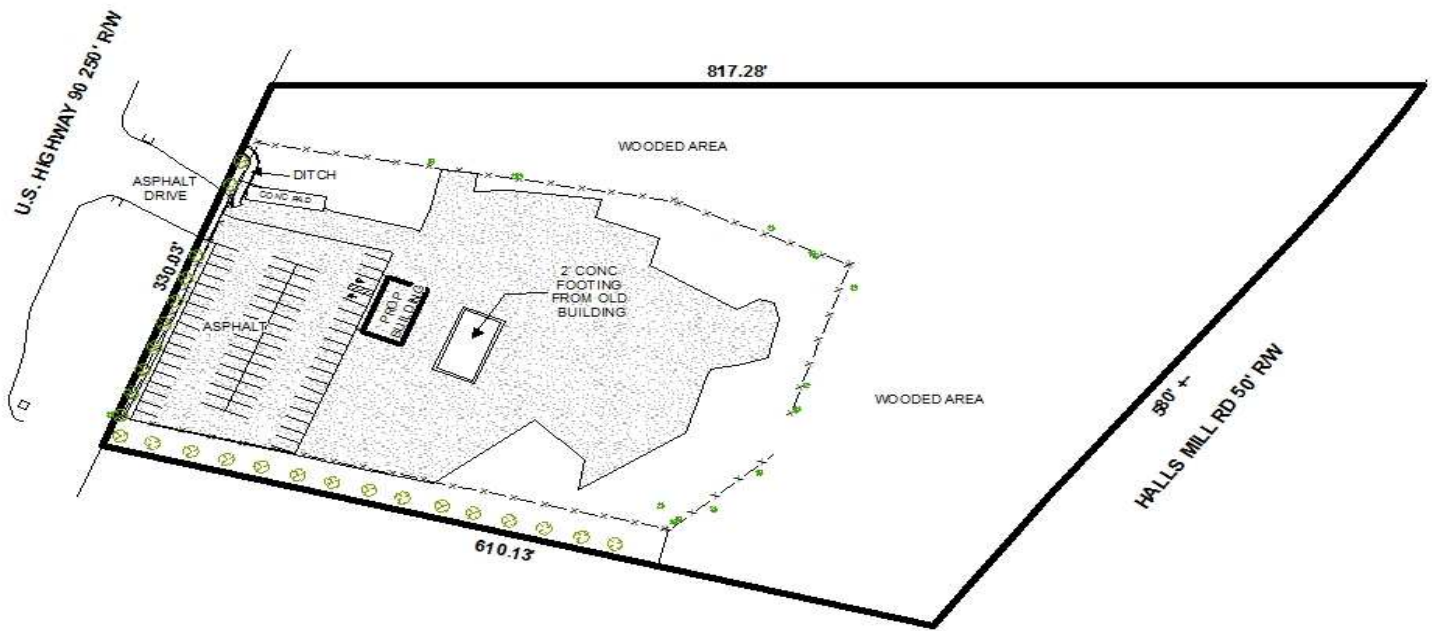


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# SITE PLAN



The site illustrates the proposed building, asphalt surface, trees, and parking.

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