

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: November 2, 2015****CASE NUMBER**

6016

APPLICANT NAME

Charles B. Archer

LOCATION3709 Demetropolis Road
(Northeast corner of Demetropolis Road and Halls Mill Road).**VARIANCE REQUEST****USE:** Use Variance to allow a liquor store in a B-5, Office-Distribution District.**ZONING ORDINANCE
REQUIREMENT****USE:** The Zoning Ordinance does not allow liquor stores in B-5, Office-Distribution Districts.**ZONING**

B-5, Office-Distribution District

AREA OF PROPERTY

1.36± Acres

**ENGINEERING
COMMENTS**

No Comments

**TRAFFIC ENGINEERING
COMMENTS**

The driveways have been located as far as practical from the intersection, while still maintaining ninety degree angles with the roadway. Development at this corner, with or without the inclusion of a liquor store, will likely experience delays during the peak hour, due to the proximity and geometrics (skew) of the nearby intersection.

**CITY COUNCIL
DISTRICT**

District 4

ANALYSIS

The applicant is requesting a Use Variance to allow a liquor store in a B-5, Office-Distribution District; the Zoning Ordinance does not allow liquor stores in B-5, Office Distribution Districts.

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 states:

We are submitting a variance application to allow a liquor store to be located in the same building as a gas station. We will have one tenant occupying this building and the liquor store will operated within the confinements of the law for allowable hours of operation. The convenience store will be open for 24 hours. The site is B-5 which is the reason for the request for approval. There are not many developments in this area and 2 corners remain undeveloped. There is a need for this type of store in the area and we ask for approval.

The applicant proposes the development of a convenience store with gasoline sales on the southwest corner of the property at 3709 Demetropolis Road. The purpose of this variance application is to allow a liquor store as a separate use within the convenience store, a use not allowed by right in a B-5, Office-Distribution District. In addition to their request for a use variance, the applicant is requesting Planning Commission approval at its November 5th, 2015 meeting of a sidewalk waiver, and of the subdivision of the property from one legal lot of record into two legal lots; the proposed development would occupy the smallest of the proposed lots.

It should be noted that liquor stores are allowed by right in B-2, Neighborhood Business, B-3, Community Business, and B-4, General Business Districts. While there are no nearby sites within a B-4, General Business District, there are several sites within 0.5± miles of the proposed development that are either B-2, Neighborhood Business Districts, or B-3, Community Business Districts, and are undeveloped.

It should also be noted that, with regards to what the applicant mentions is a need for the proposed use within the site's vicinity, staff has determined that two convenience stores with gasoline, beer and wine sales are located within 1± mile of the proposed development. Additionally, there are various lounges and restaurants which serve alcohol also within 1± mile of the proposed development.

A multi-family residential apartment complex is across from the site along Demetropolis Road, which may be of concern regarding the hours of operation of the site's proposed use.

The site was the subject of subdivision and rezoning applications at the February 21, 2008 meeting of the Planning Commission. The purpose of the subdivision application was to create one legal lot of record from one metes-and-bounds parcel, and rezoning from R-1, Single-Family Residential to B-5, Office-Distribution to allow a 60,000 square foot office/warehouse for mechanical and HVAC equipment distribution was requested. The Planning Commission

approved the subdivision and recommended to the City Council approval of the rezoning of the site; the Final Plat was recorded in Mobile County Probate Court on March 19, 2008 and City Council adopted the rezoning of the site at its April 29, 2008 meeting. It should be noted that, while applications and plans for construction of the proposed 60,000 square foot office/warehouse were received and reviewed by staff in 2008, the site was never developed.

The submitted site plan illustrates a proposed 5,000 square foot commercial building, thus requiring 17 parking spaces. The site plan depicts 17 spaces, two of which are handicap accessible and share an access aisle, with each parking stall meeting the minimum length and width requirements of Section 64-6.A.2. of the Zoning Ordinance; curb and wheel stops are also provided, where necessary. A photometric plan is not required due to the limited amount of proposed parking; however, any exterior lighting fixtures or site lighting are to comply with Sections 64-6.A.8.b. and 64-6.A.8.c. of the Zoning Ordinance.

It should be noted that, while the applicant mentions the proposed development includes gasoline sales, the site plan does not depict such use with regards to information detailing gasoline pumps, canopy, altered drive aisle(s) width(s), altered landscaping, or pedestrian access safety; if approved, a revised site plan illustrating this information would be required.

A dumpster pad is depicted on the site plan and meets the requirements of Section 64-4.D.9. of the Zoning Ordinance.

Landscaping is proposed on the site plan and meets the minimum requirements of Section 64-4.E.3. of the Zoning Ordinance. It should be noted that an existing pecan tree is indicated as a tree credit, however, the tree is located in the right-of-way and is, therefore, ineligible to be credited toward landscaping; if approved this information should be corrected on a revised site plan.

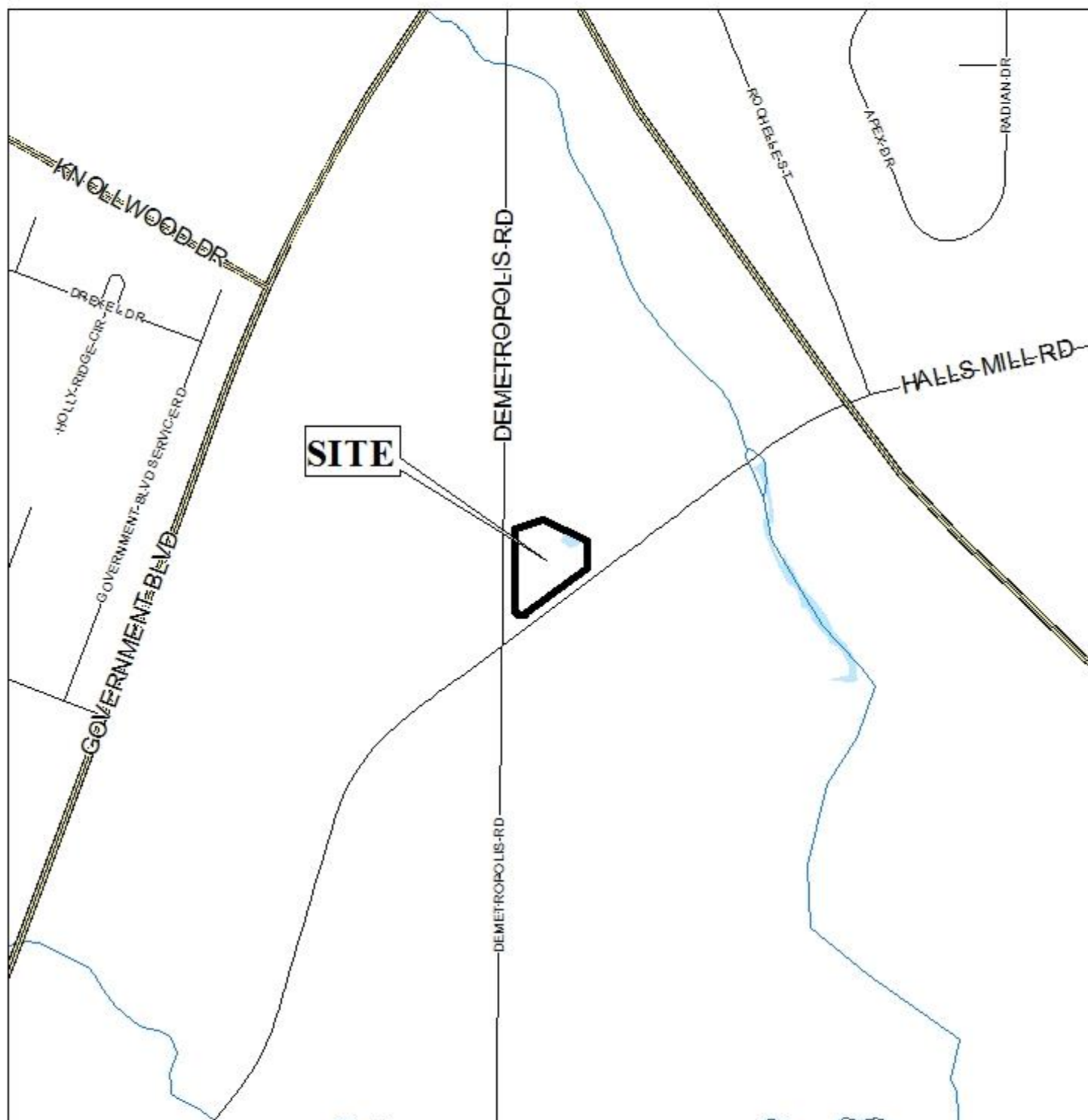
Staff is aware that use variances have been granted previously by the Board for nearby properties; however most of these use variances were granted more than 30 years ago, with the properties having since conformed to their zoning district. Some exceptions remain, but not in such a way that precedence would validate the proposed use of the site in question. In considering that appropriate zoning districts exist nearby in which the proposed use would be appropriate, that the proposed use is not uncommon within the vicinity of the site, and that the hours of operation of the proposed use might negatively impact a nearby apartment complex, denial of the request may be appropriate, with an application for rezoning of the site to B-2 or B-3 submitted to the Planning Commission, instead. As such, the applicant has not presented sufficient evidence demonstrating a hardship as required in Section 64-8.B.6.f.(3).(d). of the Zoning Ordinance.

RECOMMENDATION: Based on the preceding, staff recommends to the Board the following findings of fact for Denial:

- 1) Granting the variance will be contrary to the public interest in that there are several sites within 0.5± miles of the site which are undeveloped and allow a liquor store, by right;

- 2) Special conditions do not exist in such a way that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship, as the applicant could request a rezoning of the site to accommodate the proposed use; 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 for the proposed use since sites similar in use to the proposed site already exist nearby.

LOCATOR MAP



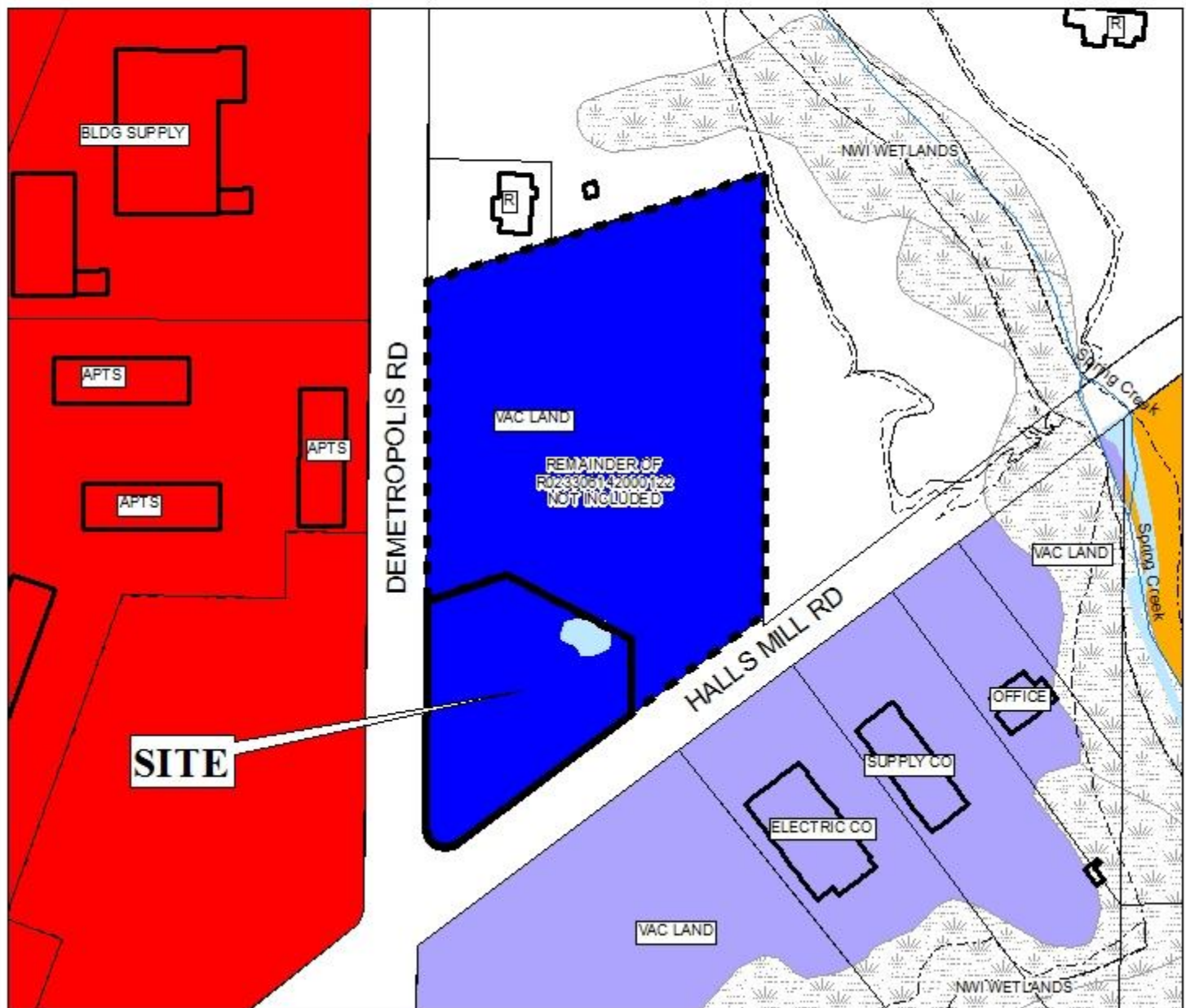
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REQUEST Use Variance



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by miscellaneous uses.

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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 ZONING

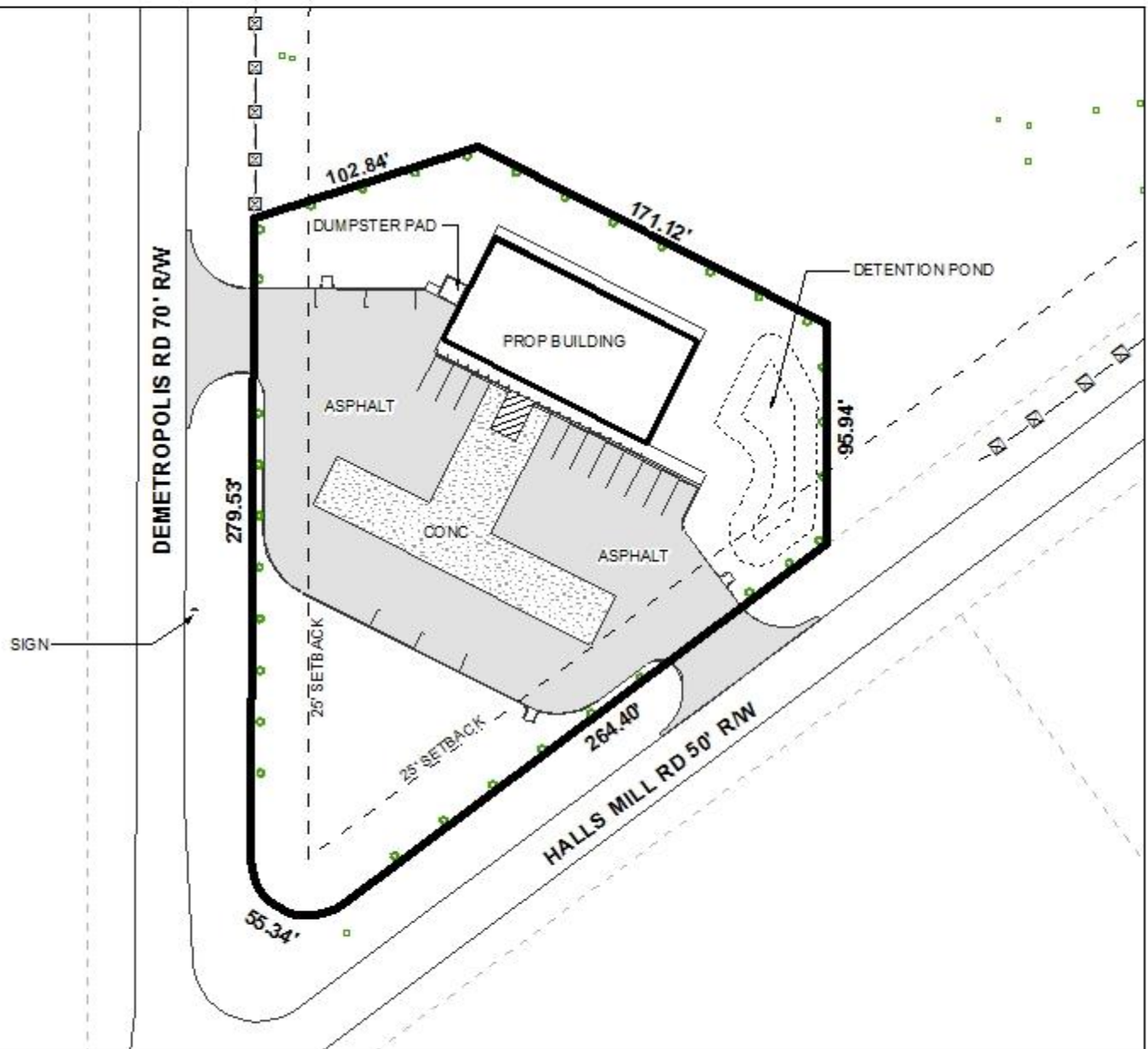


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SITE PLAN



The site plan illustrates the proposed building, proposed parking facility, proposed detention pond, and setbacks.

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