

**REZONING &
SUBDIVISION STAFF REPORT****Date: May 1, 2003****APPLICANT NAME**Treasure Properties, Inc.
(Richard L. Biseli, Agent)**SUBDIVISION NAME**Government Street Highland Subdivision, Resubdivision of
Lots 52, 53 and 54**LOCATION**

Subdivision: 254, 256 and 260 Dogwood Drive
(Southeast corner of Airport Boulevard and
Dogwood Drive)

Rezoning: 254, 256 and 260 Dogwood Drive
(Southeast corner of Airport Boulevard and
Dogwood Drive)

PRESENT ZONING

R-1, Single-Family Residential

PROPOSED ZONING

LB-2, Limited Neighborhood Business

AREA OF PROPERTY

Subdivision: 2.5± Acres 1 Lots

Rezoning: 2.5± Acres

CONTEMPLATED USE

Retail Sales with Drive-Thru Window Service

TIME SCHEDULE

Immediate

**ENGINEERING
COMMENTS**

Request dedication of 25-foot radius at intersection of
Dogwood Dr. and Airport Blvd. Must comply with all stormwater and flood control ordinances.
Any work performed in the right of way will require a right of way permit.

**TRAFFIC ENGINEERING
COMMENTS**

Driveway number, sizes, location and design to be approved
by Traffic Engineering and conform to AASHTO standards.

REMARKS

The applicant is proposing development of the site as a retail
use with drive-thru facilities. As the site currently consists of three residential lots rezoning and
resubdivision are required.

This area is shown on the General Land Use component of the Comprehensive Plan as residential.
However, the Comprehensive Plan is meant to be a general guide, not a detailed lot and district plan
or mandate for development. The Planning Commission and City Council may consider individual
cases based on additional information such as the classification requested, the surrounding
development, the timing of the request and the appropriateness and compatibility of the proposed use
and zoning classification.

In this particular instance there are several factors to consider. The first is the general location of the site in question, which is at the intersection of two Major Streets, as indicated on the Major Street Plan component of the Comprehensive Plan. The Zoning Ordinance recommends such sites as being appropriately located for the creation or establishment of a new commercial district. This site is the only residential property located at the intersection of two major streets along Airport Boulevard from Interstate 65 to the City Limits. Further contributing to the unique circumstances of this property is that it is bounded on the East by a third street (Dogwood Drive, a minor residential street).

Another factor to consider is the appropriateness and compatibility of the zoning classification requested. The applicant is seeking LB-2, Limited Neighborhood Business zoning. This classification was recently created as a result of comments from the Mayor, Council Members and Planning Commission Members expressing a desire for a zoning classification that allowed some retail uses, but excluded many that were considered “offensive”. By eliminating the “offensive” uses, it was intended that the classification would be more compatible with neighboring residential areas.

The Zoning Ordinance lists several reasons for amending the Zoning Map, one of which is changing conditions. When Government Street Highland Subdivision was developed, University Boulevard did not exist. In fact, several lots and portions of other lots were acquired for right-of-way. Further changes in conditions are the commercialization of the other three corners of this intersection. To require this property to remain residential would be treating it differently, not only from the other corners at this intersection but also from all other major street intersections along Airport Boulevard from Interstate 65 to the City Limits.

The Ordinance also states that the locational guidelines for LB-2 districts shall be the same as for a B-2 district (located at or near the intersection of two major streets and contain a minimum of two acres). The site in question is located at the intersection of two major streets and contains 2.5[±] acres.

As stated above, Airport Boulevard (which has an existing right-of-way of 53’ from centerline) and University Boulevard (which has an existing right-of-way of 50’ from centerline) are major streets as shown on the Major Street Plan. Both have existing right-of-ways in compliance with the plan. Given the existing development along both Airport Boulevard and University Boulevard, a 40’ parallel service road is not possible; therefore, an alternative method of access management would be appropriate.

The site plan submitted exceeds requirements for landscaping and retains many of the existing trees on site. While some trees will have to be removed, those are predominately in the center of the site and not along the perimeter. Also, a large landscaped buffer, which exceeds Zoning Ordinance requirements, is to be provided along the South property line, and screening of parking with landscaping are to be proposed along the East property line (abutting Dogwood Drive). The plan also indicates the provision of a sidewalk along all street frontages. Because some portions of the sidewalk are shown to be on private property due to trees in the right-of-way, an easement for those areas and a hold harmless agreement will be required.

At the time of this analysis, some residents of Government Street Highland Subdivision have expressed opposition to this request, making reference to restrictive covenants, an agreement that there would be no access to University Boulevard from Oak Ridge Road to Airport Boulevard, and

the safety of the intersection as primary reasons that this application should be denied. This report will therefore address these issues.

Restrictive Covenants are a private contract and not administered or enforced by the City. There have been numerous opinions by The Office of The Attorney General of The State of Alabama on point, which state that restrictive covenants do not bind the governing body from exercising its zoning authority; but should be considered in as much as the governing body might consider the wishes of residents of the area involved. The private parties involved must pursue enforcement of the covenants.

Staff has been unable to locate any documents of agreement that there would be no access to University Boulevard from Oak Ridge Road to Airport Boulevard. There is, however, a general statement in the U.S. Department of Transportation, Federal Highway Administration and State of Alabama Highway Department's Administrative Action Final Environmental Impact Statement for University Boulevard regarding limitation of access. However, over the years there have been numerous direct access points to University Boulevard granted which do not fully comply with this general statement. Absolute compliance at this juncture may be construed as discrimination.

Additionally, access as proposed would be less of a hazard than the allowance of a curb cut to Airport Boulevard. While there is access to Dogwood Drive, the use of a minor residential street for the sole access of a commercial site would be inappropriate. Typically, access to a minor residential street would not be desirable; however, given the alternatives, the location of a driveway on Dogwood Drive, a safe distance from Airport Boulevard, would be the least problematic.

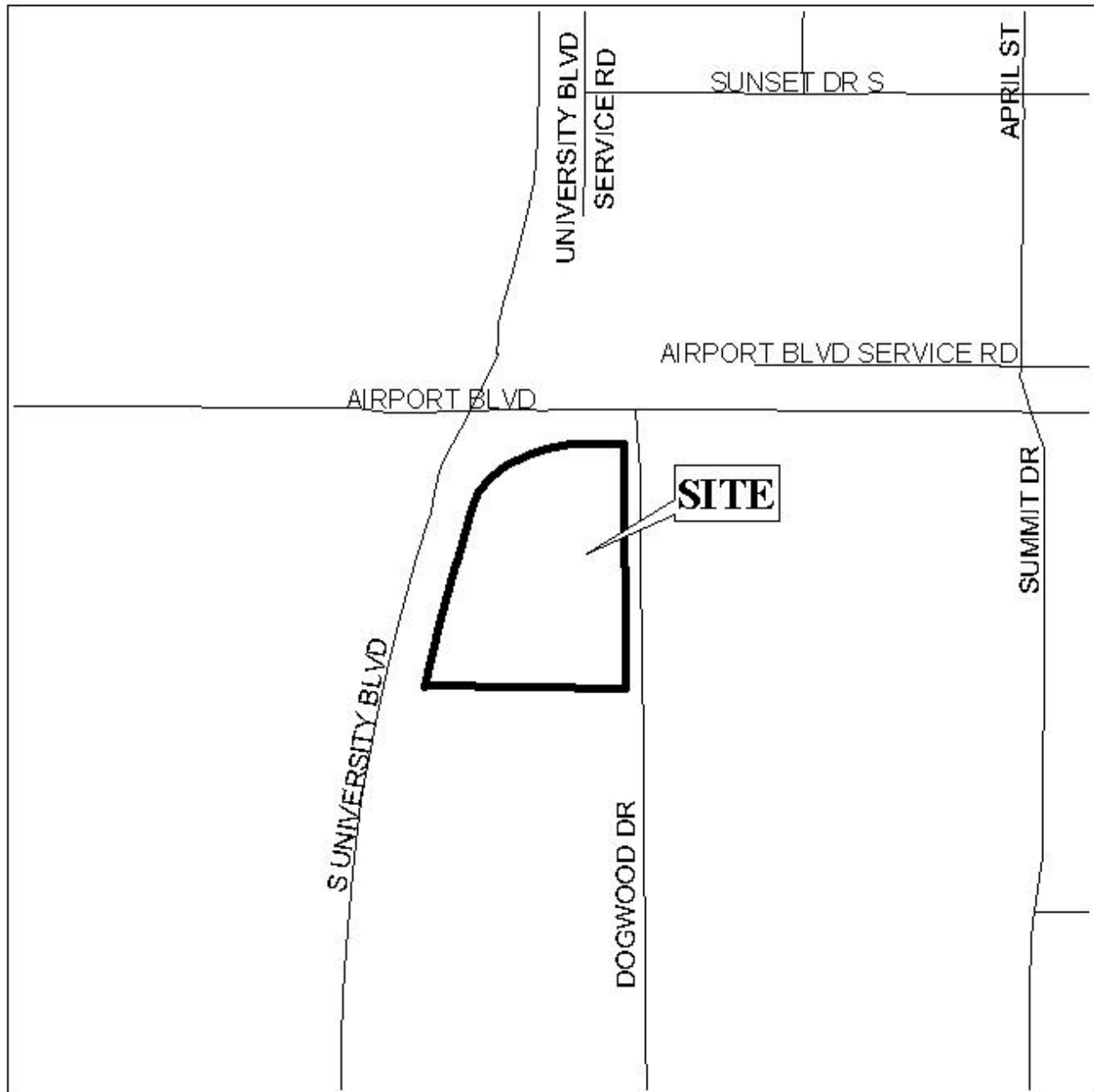
With regard to the safety of the intersection, as a first step towards reducing congestion at this intersection the City has extended the length of the turn lane from Westbound Airport Boulevard to Southbound University Boulevard. Other projects are being considered by the Traffic Engineering Department, which will improve traffic flow and safety at this intersection.

RECOMMENDATION

Rezoning: based on the preceding, it is recommended that this application be approved subject to the following conditions: 1) completion of the accompanying subdivision application; 2) provision of a 6' privacy fence or wall (minimum) and a 25' landscaped buffer (minimum) along the South property line, with the exception of the drive from University Boulevard and the maneuvering drive along Dogwood Drive; 3) provision of screening in compliance with Section VI.A.3.i for the entire Dogwood Drive frontage, with the exception of the 45' setback from Airport Boulevard for the visibility triangle (Section IV.D.4); and 3) full compliance with all municipal codes and ordinances.

Subdivision: the plat meets the minimum requirements of the Subdivision Regulations and is recommended for Tentative Approval subject to the following conditions: 1) dedication of a 25' radius at the intersection of Dogwood Drive and Airport Boulevard; 2) placement of a note on the final plat stating that the site is limited to one curb cut to University Boulevard, location and design to be approved by the Traffic Engineering Department; 3) placement of a note on the final plat stating that the site is limited to one curb cut to Dogwood Drive, location and design to be approved by the Traffic Engineering Department; and 4) provision of sidewalk easements and hold harmless agreements for those portions of sidewalks to be provided on the private property.

LOCATOR MAP



APPLICATION NUMBER 4 & 5 DATE May 1, 2003

APPLICANT Treasure Properties, Inc. (Richard L. Biseli, Agent)

REQUEST Rezoning from R-1 to LB-2, Subdivision



PLANNING COMMISSION VICINITY MAP - EXISTING ZONING



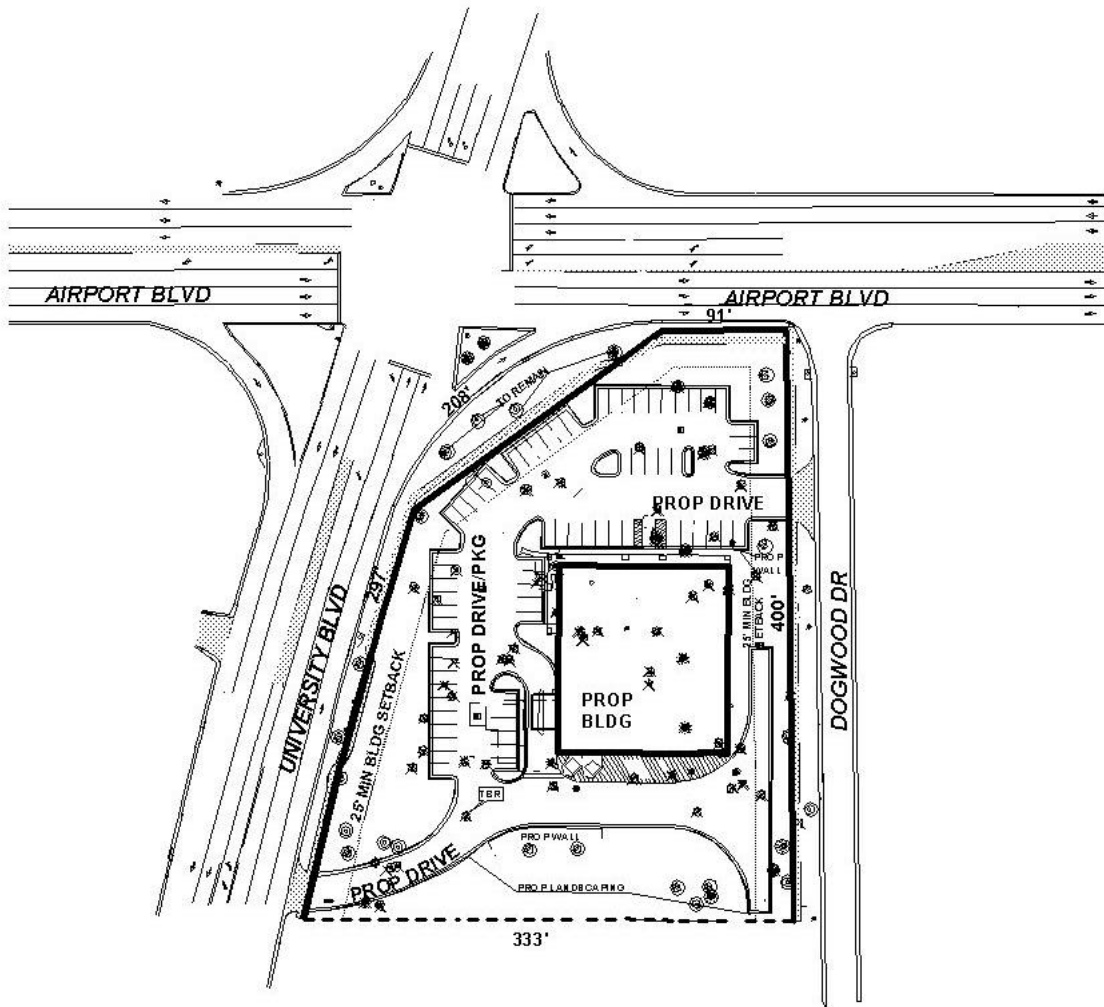
Located to the north and west of the site are commercial sites. Single-family residential units are located to the east, south, and north of the site.

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LEGEND



SITE PLAN



The site plan illustrates the existing trees and intersection layout along with the proposed building, landscaping, parking, and trees to be removed.

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