

**REZONING &  
SUBDIVISION STAFF REPORT****Date: August 5, 2004****APPLICANT NAME**

Richard Cagle

**SUBDIVISION NAME**Government Street Highland Subdivision, Resubdivision of  
Lots 52, 53 and 54**LOCATION**254, 256 and 260 Dogwood Drive  
(Southeast corner of Airport Boulevard and Dogwood  
Drive)**CITY COUNCIL  
DISTRICT**

District 5

**PRESENT ZONING**

R-1, Single-Family Residential

**PROPOSED ZONING**

LB-2, Limited Neighborhood Business

**AREA OF PROPERTY**

2.5± Acres                      1 Lots

**CONTEMPLATED USE**

Retail Sales

**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.

**URBAN FORESTRY  
COMMENTS**

Property to be developed in compliance with state and local  
laws that pertain to tree preservation and protection on both city and private properties (City  
Code Chapters 57 and 64 and State Act 61-929). Tree removal permits are required for all Live  
Oak Trees 24" and larger on development site. All curb cuts are to be coordinated with Urban  
Forestry due to existing trees on city right of way. If any trees are proposed for removal on city  
right of way, a permit is required from the Mobile Tree Commission.

**REMARKS**

The applicant is proposing development of the site as a retail use. 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.

An application for rezoning to LB-2 was presented to the Planning Commission in May 2003. After considerable discussion about access and traffic concerns, the Planning Commission recommended denial of the application. While elements of the application are different, there have been no changes in the immediate vicinity; therefore, the staff report and recommendation have been modified to reflect the elements that have changed.

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.

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. LB-2 was created as a "Hybrid" 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.

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, limitations on curb cuts would be an appropriate method of access management. Additionally,

During the previous application process, residents of Government Street Highland Subdivision expressed opposition, 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.

As indicated in previous staff reports, 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.

With regard to access to University Boulevard, staff was 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. Typically, access to a minor residential street such as Dogwood Drive 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.

The City has extended the length of the turn lane from Westbound Airport Boulevard to Southbound University Boulevard. Some other projects considered by the Traffic Engineering Department to improve traffic flow and safety at this intersection are proposed by the applicant as part of the development plan. The plan reflects a redesign of the right turn from South University Boulevard onto Airport Boulevard, including dedication of additional right-of-way to accommodate the new design and construction of the necessary improvements. The applicant is also proposing closure of existing median cuts, per discussions with Traffic Engineering; and, if an agreement with the neighborhood can be reached, the closure of Dogwood, including the construction of a cul de sac.

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. The plan does not indicate the provision of a sidewalk along all street frontages; however, unless a sidewalk waiver is requested and approved, sidewalks will be required. Because some portions of the sidewalk

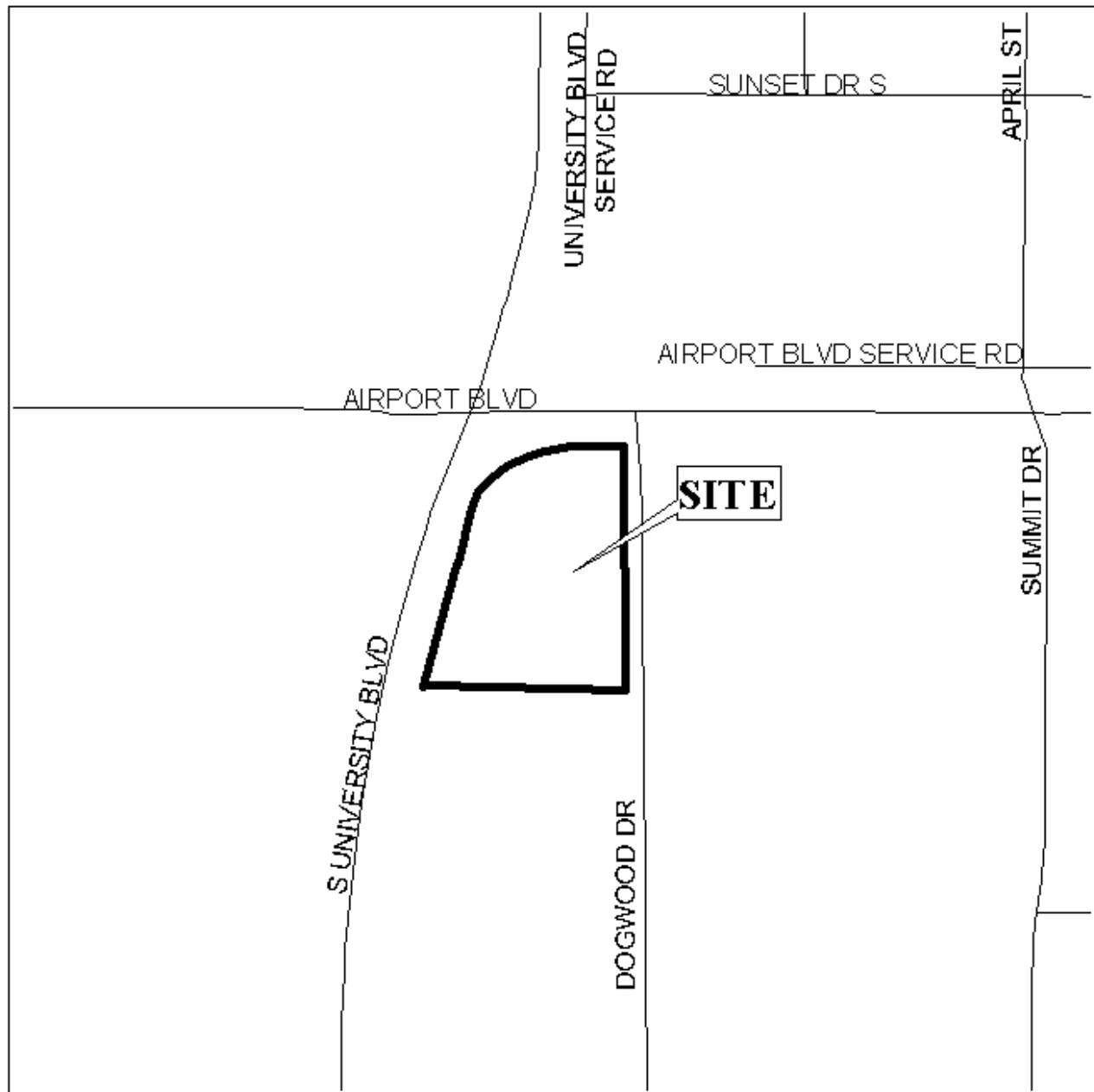
may be on private property due to trees in the right-of-way, an easement for those areas and a hold harmless agreement would be required.

**RECOMMENDATION**

**Rezoning:** based on the preceding, it is recommended that this application be approved subject to the following conditions: 1) dedication and construction of the redesigned turn lane as reflected on the site plan submitted, exact design to be approved by Traffic Engineering; 2) construction of median modifications as reflected on the site plan submitted, exact design to be approved by Traffic Engineering; 3) completion of the accompanying subdivision application; 4) provision of a 6' (minimum) privacy fence or wall and a 25' (minimum) landscaped buffer along the South property line, with the exception of the drive from University Boulevard; 5) provision of screening of parking 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 6) 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 and construction of the redesigned turn lane as reflected on the site plan submitted, exact design to be approved by Traffic Engineering; 2) construction of median modifications as reflected on the site plan submitted, exact design to be approved by Traffic Engineering; 3) dedication of a 25' radius at the intersection of Dogwood Drive and Airport Boulevard; 4) 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; 5) 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 6) provision of sidewalk easements and hold harmless agreements for those portions of sidewalks that may be provided on the private property.

## LOCATOR MAP



APPLICATION NUMBER 6 & 7 DATE August 5, 2004

APPLICANT Richard M. Cagle

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



NTS

# 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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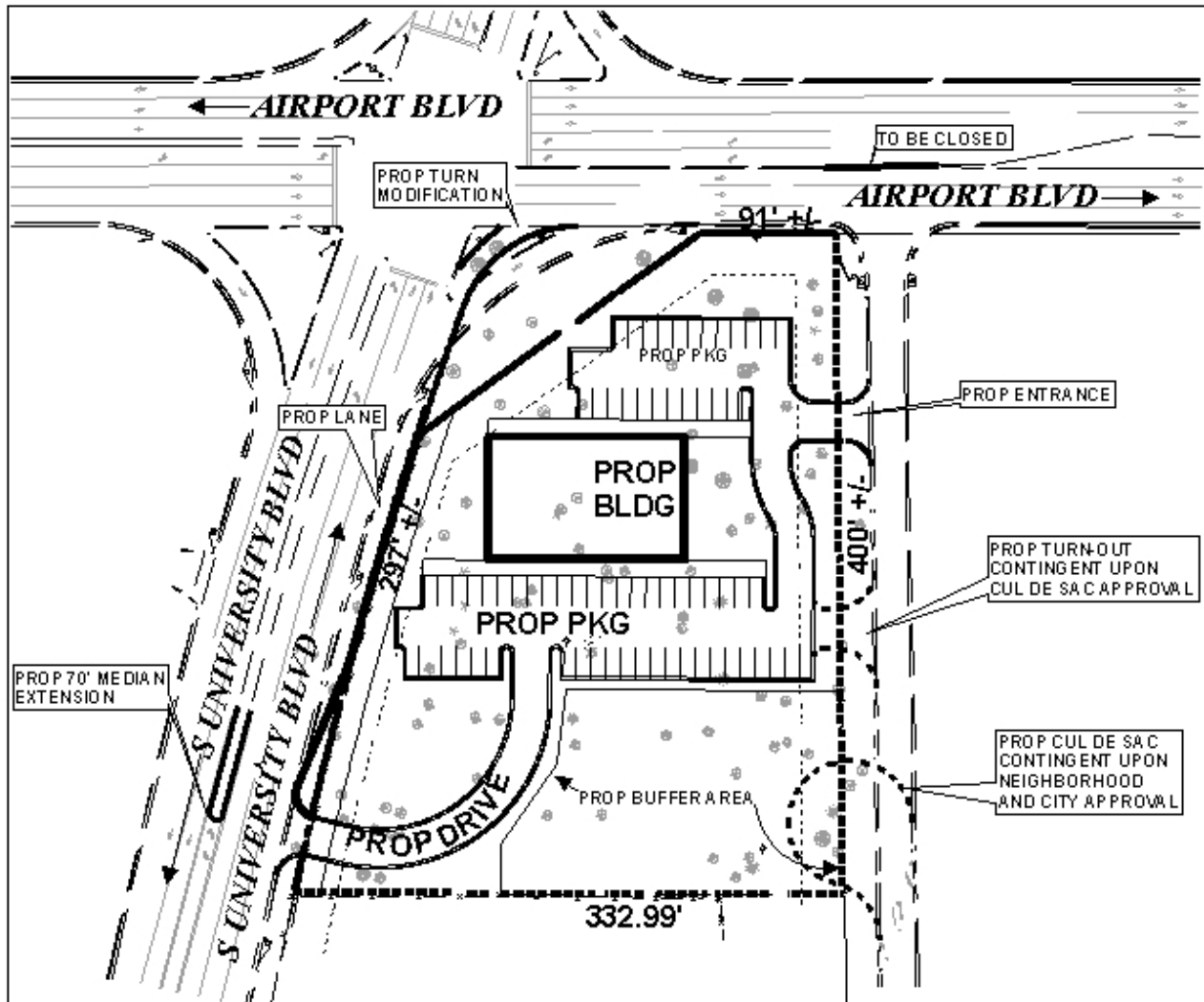
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LEGEND 

R-1	R-2	R-3	R-A	R-B	H-B	B-1	LB-2	B-2	B-3	B-4	B-5	I-1	I-2	NTS
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# SITE PLAN



The site plan illustrates the proposed building, parking, entrances, buffer area, and traffic lane modifications.

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