

**REZONING &  
SUBDIVISION STAFF REPORT****Date: May 2, 2013**

**APPLICANT NAME** Doug Anderson

**SUBDIVISION NAME** Airport – University Subdivision

**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** Quick Service Restaurant with Two Drive Thru Lanes

**TIME SCHEDULE** Upon Completion of Rezoning and Clear Title

**ENGINEERING  
COMMENTS**

The following comments should be addressed prior to review, acceptance and signature by the City Engineer:

1. Provide all of the required information on the Final Plat (i.e. signature blocks, signatures, certification statements, legal description, required notes).
2. Provide a signature block and signature from the Traffic Engineering Department.
3. Add a note to the Plat stating that storm water detention will be required for any future addition(s) and/or land disturbing activity in accordance with the Storm Water Management and Flood Control Ordinance (Mobile City Code, Chapter 17 , Ordinance #65-007 & #65-045).
4. Dedicate a minimum 25' radius at the corner of Dogwood Drive and Airport Blvd.

**TRAFFIC ENGINEERING  
COMMENTS**

Driveway number, size, location and design to be approved by Traffic Engineering, and conform to AASHTO standards. Access to Airport Boulevard is denied and access to University is restricted to right-in/right-out only

**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). Request a hold over so the applicant can submit a revised site plan showing existing trees located along the right of way and all 24" and larger Live Oak trees located on the proposed development.

## **FIRE DEPARTMENT**

### **COMMENTS**

All projects within the City of Mobile Fire Jurisdiction must comply with the requirements of the 2009 International Fire Code, as adopted by the City of Mobile.

### **REMARKS**

The applicant is proposing development of the site as a quick service restaurant with two drive thru lanes. 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.

Subdivision review examines the site with regard to promoting orderly development, protecting general health, safety and welfare, and ensuring that development is correlated with adjacent developments and public utilities and services, and to ensure that the subdivision meets the minimum standards set forth in the Subdivision Regulations for lot size, road frontage, lot configuration, etc.

Applications for rezoning to LB-2 were presented to the Planning Commission in May 2003 and August 2004. In 2003, after considerable discussion about access and traffic concerns, the Planning Commission recommended denial of the application. In 2004, again after considerable discussion about access and traffic concerns, as well as impacts on the property due to its location, the Commission recommended approval of the rezoning application subject to numerous conditions. The request was ultimately denied by the City Council.

As many of comments and issues relating to the proposed rezoning are they same as with the previous applications, those same comments will be included in this report. Comments regarding the specific site plan as submitted with this application will also be addressed in this report.

The Zoning Ordinance 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 in 2003 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, which is what the applicant cited in the application. 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. Recently, several residential properties (the remaining residentially zoned properties of the entire block) to the North, across Airport Boulevard, were rezoned to allow construction of a large, major Grocery. 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 and University Boulevard are major streets as shown on the Major Street Plan. Neither the plat nor plan submitted indicate the right-of-way of any of the three abutting streets. However, based on the previous staff reports 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) both have existing right-of-ways in compliance with the plan. It appears that Dogwood Drive has a compliant right-of-way as well. If approved, all pertinent right-of-way information should be shown on the final plat and 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.

The applicant is proposing one curb cut to University Boulevard, two curb cuts to Dogwood Drive, and no access to Airport Boulevard. Access as proposed would be less of a hazard than the allowance of a curb cut to Airport Boulevard. There is, however, some concern that customers who wish to travel West or South will take Dogwood Drive through the neighborhood to Oak Ridge Drive, then to University. Exacerbating this issue is the fact that there is median cut at Oak Ridge Drive for customers to cross and make a left turn. This would be encouraged by the fact that there are two, two-way curb cuts on Dogwood Drive, one of which is near the South end of the property, well within the neighborhood.

The plan illustrates the proposed drive onto University Boulevard as being right in, right out, as referenced in the Traffic Engineering Comments. 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. If approved, the site should be limited to the right in, right out curb cut to

University Boulevard as shown, and one curb cut to Dogwood Drive, to be designed in a manner that allows right in, left out only. This would minimize the impact on the residents of Dogwood Drive and the remainder of the subdivision.

As submitted, the application and site plan indicate that there are no 24" and larger live oaks on the site; however, comments from the Urban Forestry Section and aerial photographs indicate that there are. Further, a site visit was made and a 28" Live Oak was found on the site.

One element of the 2004 application that is not referenced in this request is the closure of most of Dogwood Drive via a cul de sac near the South end of the site. This would separate the "commercial" traffic from the residential traffic. It would also drastically change the access for all properties on Dog Wood Drive north of Oak Ridge Drive.

Another element from the previous application that was not included or referenced in this application is the redesign of the right turn lane from University Boulevard to Airport Boulevard. One of the conditions of approval recommended by the Commission was that the turn lane improvements be completed. Without the turn lane improvements being shown on the plan, it is difficult to determine how or if the development will be impacted, or how the development could impact the design of the turn lane.

Other conditions of approval on the previous application that were not shown on the site plan, but would still be applicable to the new proposal are 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, and 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).

The plan also does not illustrate the planning of trees along University Boulevard or Airport Boulevard. While trees do not have to be spaced at 30' intervals, trees for a particular frontage to have to be planted (and maintained) along that frontage. If approved, this would be reviewed during the permitting process.

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, the safety of the intersection, and potential traffic on Dogwood Drive as primary reasons that the 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 has been unable to locate any documents of agreement with the City 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 arbitrary.

The City has extended the length of the turn lane from Westbound Airport Boulevard to Southbound University Boulevard. Some other projects are also being considered by the Traffic Engineering Department to improve traffic flow and safety at this intersection.

The site plan submitted exceeds requirements for landscaping and appears to retain some 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.

Other concerns relating to the site plan as proposed are the location of the Drive Thru order stations at the South end of the building and lack of information regarding delivery trucks and circulation. The order stations could generate noise that would affect the neighbors to the South, and if approved as submitted, delivery trucks could be traversing Dogwood Drive, a minor residential street, regularly.

Given the history of this site and its physical location, arguments for rezoning may be legitimate; however, arguments against the rezoning – at least rezoning as “intense” as LB-2 could also be legitimate. Potentially, TB, Transitional Business or B-1, Buffer Business may be more appropriate for this site. TB would allow a 5,000 sq.ft. restaurant, but not the drive thru. TB also allows many of the same retail uses allowed in LB-2, with limitations on size, location of parking, and hours of operation. B-1 would limit the site to office/professional uses such as a medical clinic, various types of offices, a bank or credit union with Planning Approval. TB zoning was not recommended for the Previous applications because it had not yet been created/adopted.

**RECOMMENDATION**

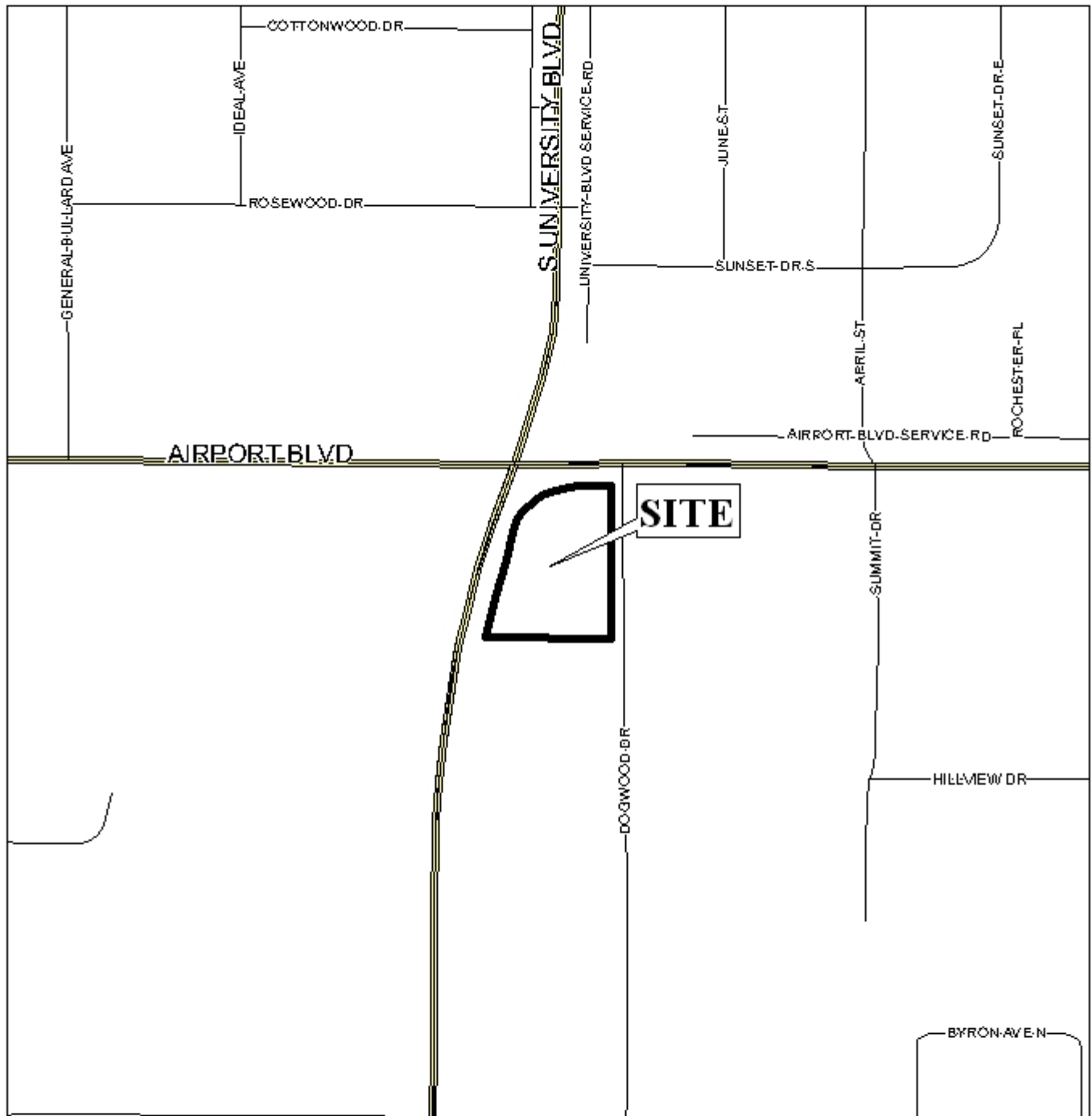
**Rezoning:** based on the preceding, it is recommended that this application be heldover until June 6, with revisions to be submitted by May 10, to allow the applicant to address the following:

- 1) consideration by the applicant of TB or B-1, in lieu of the LB-2 as requested;
- 2) illustration of all 24" and larger Live Oaks on the site;
- 3) illustration of all trees located in the right-of-way adjacent to the site;
- 4) illustration of the redesigned right turn lane on University Boulevard;
- 5) illustration of a right in/left out curb cut on Dogwood;
- 6) provision of documentation regarding deliveries (types of vehicles, hours of deliveries), and illustration of delivery circulation pattern on the site plan
- 7) illustration of a compliant city sidewalk;
- 8) illustration 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;
- 9) illustration 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
- 10) relocation of the order station to be further away from the adjacent residential property.

**Subdivision:** based on the preceding, it is recommended that this application be heldover until June 6, with revisions to be submitted by May 10, to allow the applicant to address the following:

- 1) illustration of the redesigned right turn lane on University Boulevard;
- 2) illustration of a right in/left out curb cut on Dogwood;
- 3) illustration of a 25' radius at the intersection of Dogwood Drive and Airport Boulevard; and
- 4) illustration of sidewalk easements (and hold harmless agreements) for those portions of sidewalks that may be provided on the private property.

# LOCATOR MAP



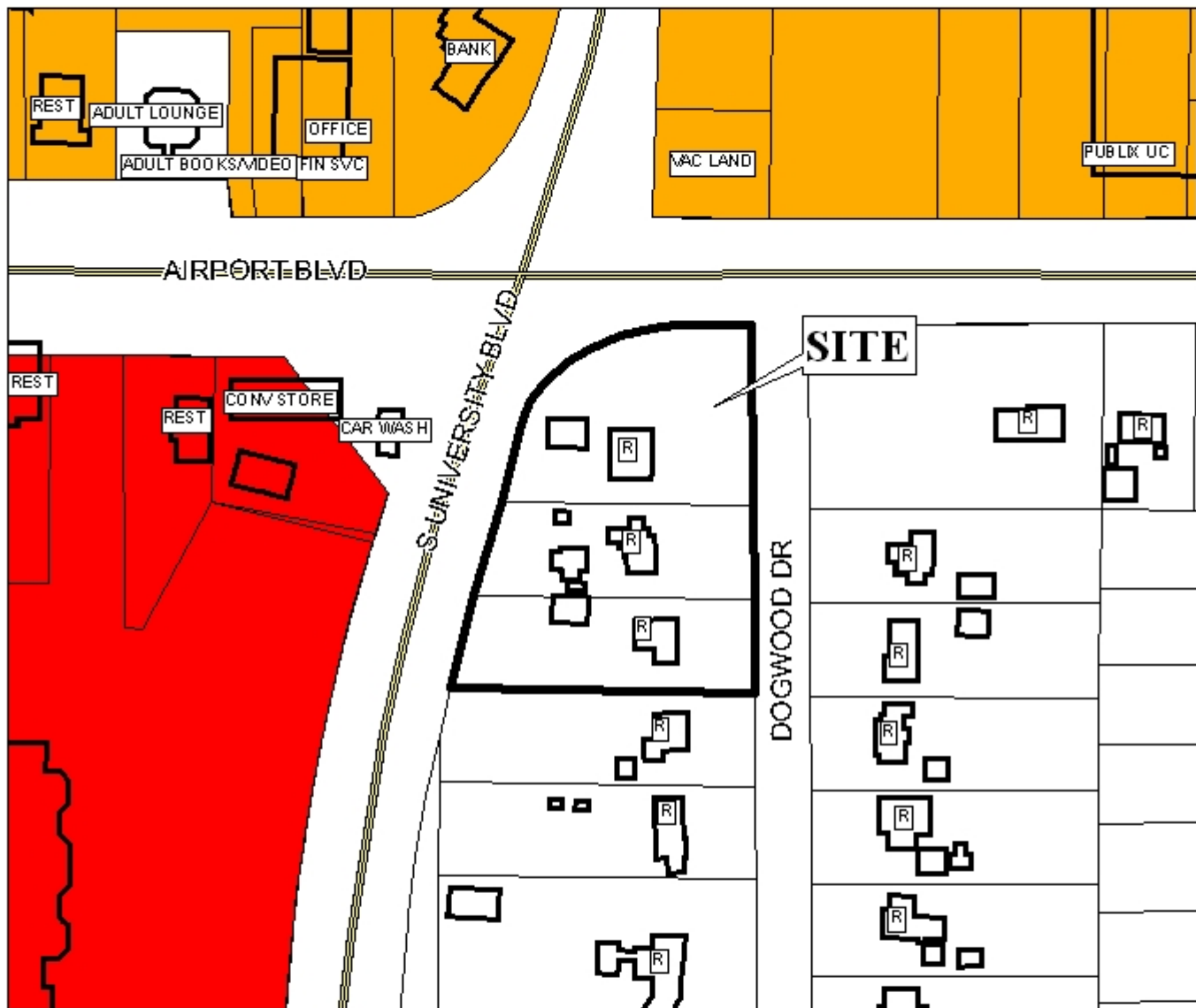
APPLICATION NUMBER 17 & 18 DATE May 2, 2013

APPLICANT Airport-University Subdivision

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



# PLANNING COMMISSION VICINITY MAP - EXISTING ZONING



Businesses are located to the west and north of the site. Single family residences are located to the east and south of the site.

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LEGEND

R-1	R-2	R-3	R-A	R-B	H-B	T-B	B-1	LB-2	B-2	B-3	B-4	B-5	I-1	I-2
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# PLANNING COMMISSION VICINITY MAP - EXISTING ZONING



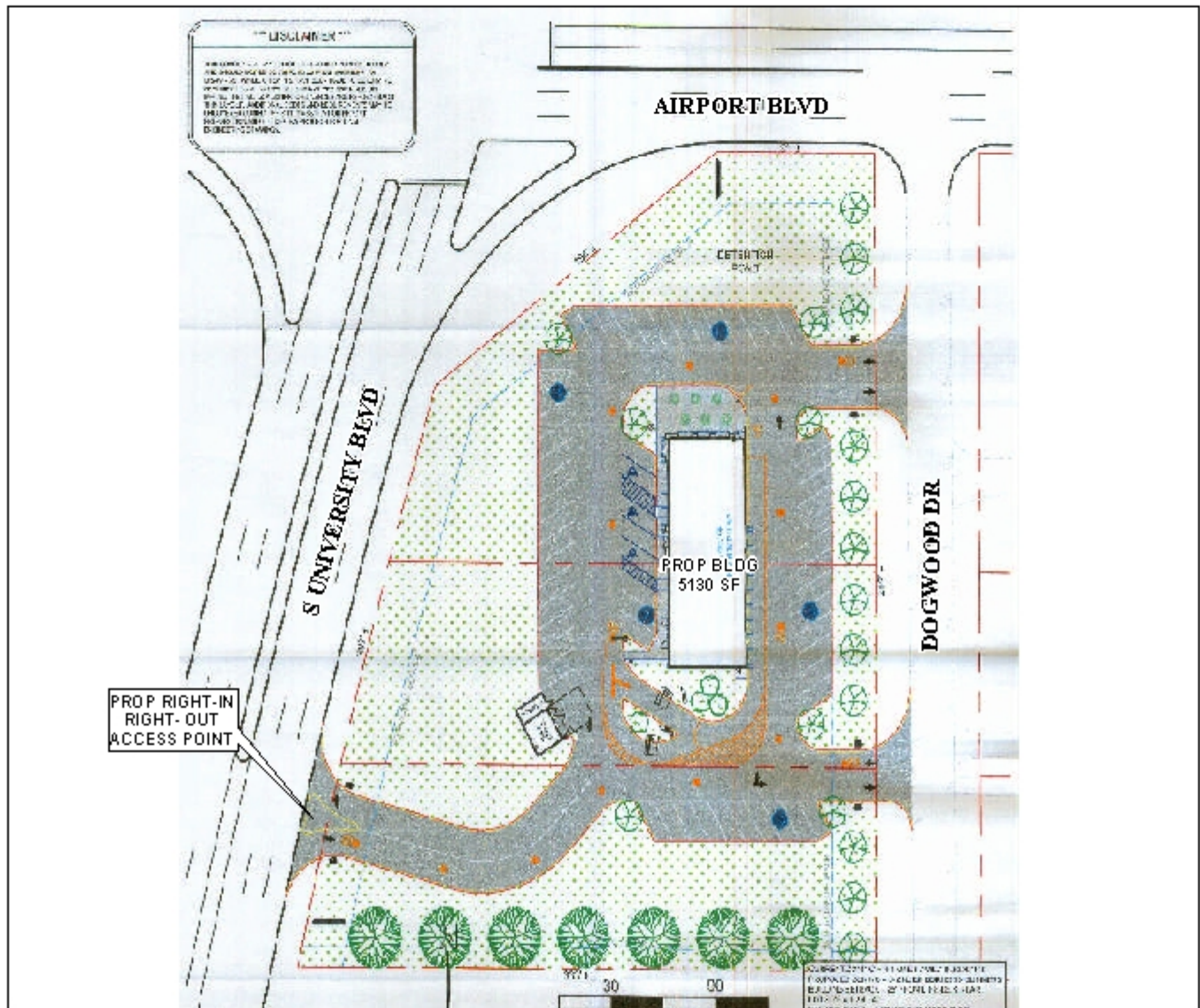
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N  
NTS



# SITE PLAN



The site plan illustrates the proposed development.

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N  
 NTS