

**ZONING AMENDMENT
& SUBDIVISION STAFF REPORT****Date: January 6, 2011****APPLICANT NAME**

The Broadway Group

SUBDIVISION NAMEMcGowin North Subdivision, Unit 1,
Resubdivision of Lot 1**LOCATION**2912 McVay Drive North
(Northwest corner of McVay Drive North and Halls Mill
Road, extending to the East side of Belvedere Circle West)**CITY COUNCIL
DISTRICT**

District 4

PRESENT ZONING

B-3, Community Business District

PROPOSED ZONING

B-3, Community Business District

AREA OF PROPERTY

1 Lot / 1.0 Acres ±

CONTEMPLATED USE

Subdivision approval to modify conditions of a previously approved legal lot of record and Zoning approval to rezone the site from B-3, Community Business District, to B-3, Commercial Business District, to remove certain conditions of the rezoning.

It should be noted, however, that any use permitted in the proposed district would be allowed at this location if the zoning is changed. Furthermore, the Planning Commission may consider zoning classifications other than that sought by the applicant for this property.

**REASON FOR
REZONING**

To remove a previous rezoning condition.

**TIME SCHEDULE
FOR DEVELOPMENT**

Immediate.

**ENGINEERING
COMMENTS**

On plat, refer to flood zone "X" Out as "X-Unshaded". Must comply with all storm water and flood control ordinances. Any increase in impervious area in excess of 4,000 square feet will require detention. Sidewalks need to be shown along property lines adjacent to public streets or apply for a sidewalk waiver. Any work performed in

the right of way will require a right of way permit. Drainage from any new dumpster pads cannot discharge to storm sewer; must have connection to sanitary sewer.

TRAFFIC ENGINEERING

COMMENTS

Driveway number, size, location, and design to be approved by Traffic Engineering and conform to AASHTO standards. Access to Halls Mill Road should be limited to right in/right out only or denied.

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 (State Act 61-929 and City Code Chapters 57 and 64).

Preservation status is to be given to the 48" Live Oak Tree located along Halls Mill Road. Any work on or under this tree is to be permitted and coordinated with Urban Forestry; removal to be permitted only in the case of disease or impending danger.

FIRE DEPARTMENT

COMMENTS

All projects must comply with the requirements of the 2003 International Fire Code, including Appendices B through D, as adopted by the City of Mobile, and the 2003 International Existing Building Code, as appropriate. Fire hydrants shall be provided per Section 508.5.1 of the 2003 IFC. Access to building shall be provided per Section 503.1.1 & 503.2.1 of the 2003 IFC.

REMARKS

The applicant is requesting Subdivision approval to modify conditions of a previously approved legal lot of record and Zoning approval to rezone the site from B-3, Community Business District, to B-3, Commercial Business District, to remove certain conditions of the rezoning.

The site is currently vacant and is proposed to be a new general retail store. The lot, Lot 1 of McGowin North Subdivision, Unit One, along with a rezoning from R-1, Single Family Residential, to B-3, Community Business District, was approved by the Planning Commission on December 19, 2002. The rezoning was subsequently approved by the City Council on February 11, 2003. The lot was approved as part of a larger, four lot subdivision, and was originally intended to function with two shared curb cuts for the entire subdivision, with access to Halls Mill Road and Belvedere Circle West being denied to Lot 1. The Commission also required privacy fencing and large vegetative buffers be provided between the proposed commercial lots and the existing single-family neighborhood which adjoined the site.

As development has occurred with the lots since their approval, the development has deviated from the originally intended design with the addition of a fifth lot, and the construction of two shared driveways to the site, with neither of the shared driveway providing access to Lot 1. This has resulted in a situation in which Lot 1 has essentially been denied access by the developer.

It should also be noted that rezoning also contained a requirement of an Administrative Planned Unit Development application to be submitted for review whenever any one of the lots was to be developed. The reasoning behind this requirement was the fact that each lot would share curb cuts with another, thus necessitating the need for the approval. As Lot 1 is proposed to not share access with another lot, and because the proposed development would otherwise be allowed without this type of approval, consideration should also be given to the removal of this requirement of the rezoning for Lot 1.

Additionally, the applicant is also requesting access to Halls Mill Road to improve circulation on the site for delivery vehicles, as well as a modification of the required buffers due to perceived logistical issues. For these reasons, the applicants have submitted these applications.

As stated in Section 64-9. of the Zoning Ordinance, the intent of the Ordinance and corresponding Zoning Map is to carry out the comprehensive planning objective of sound, stable and desirable development. While changes to the Ordinance are anticipated as the city grows, the established public policy is to amend the ordinance only when one or more of the following conditions prevail: 1) there is a manifest error in the Ordinance; 2) changing conditions in a particular area make a change in the Ordinance necessary and desirable; 3) there is a need to increase the number of sites available to business or industry; or 4) the subdivision of land into building sites makes reclassification of the land necessary and desirable.

The site is depicted as being on the border between commercial and residential on the General Land Use Component of the Comprehensive Plan, which is meant to serve as a general guide, not a detailed lot and district plan or mandate for development. The accuracy of recommended land uses on the General Land Use Component map is limited due to the large scale of the map. Moreover, the General Land Use Component allows the Planning Commission and City Council to consider individual cases based on additional information such as the classification request, the surrounding development, the timing of the request, and the appropriateness and compatibility of the proposed use and zoning classification.

The applicant did not submit justification for rezoning as the site is technically properly zoned for the intended use of a general retail store, rather, the impetus for the application is to modify conditions, which does imply changing conditions. Given the fact that the site has now become essentially landlocked due to lack of access, as caused by the developer, conditions have changed since the original approvals, and thus the rezoning should be approved. That the site's rezoning conditions should be changed seems obvious, the scope of those changes, however, require further consideration.

The site has to be allowed access to a public street, and, as the access will not be shared, no Administrative PUD or full PUD approvals should be required, unless the proposed development is amended in a fashion as to warrant such approvals.

Regarding the previously mentioned privacy fence and vegetative buffers, these are both requirements of the rezoning and a plat restriction. The applicant has stated that there are logistical issues associated with requiring both a privacy fence and a ten-foot wide vegetative buffer abutting the fence, namely being able to access the fence to make repairs through the

buffer. Generally, the Commission will require either a vegetative buffer or a privacy fence; however, in this case, both were required. A review of the minutes indicates opposition to the proposed development in 2002 from property owners in the vicinity and the property owners desire to be buffered as much as possible from the proposed development, hence the reason for the Commission requiring both the vegetative buffer and the fence. It would seem that the applicant has a valid point in that it would be difficult, if not impossible, to make repairs to the privacy fence without crossing onto someone else's property or disturbing the vegetative buffer. As such, the condition could be modified to require a privacy fence in compliance with Section 64-4.D.1.A. of the Zoning Ordinance, and also require sufficient overstory, evergreen tree plantings (such as Live Oaks or Bald Cypress) so as to provide a continuous buffer in the 10 foot area between the fence and the development, and require the buffer to remain open space and be free from parking. This should provide the same protection as originally intended, and remove the logistical issues expressed by the applicant. The trees planted in satisfaction of this requirement can be counted towards perimeter and parking tree planting requirements of the Zoning Ordinance.

The remaining conditions (with the exception of the condition requiring dedication) of the original approval should be maintained including: prohibition of commercial signage on the eastern portion of the lot along Belvedere Circle West and Halls Mill Road, denial of direct access to Belvedere Circle West, and full compliance with tree plantings and landscaping requirements; and full compliance with all municipal codes and ordinances.

Regarding the subdivision request, this 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.

The plat illustrates the proposed 1 acre \pm , 1 lot subdivision. The applicant states that the subdivision is served by both public water and sanitary sewer.

The proposed lot meets minimum size and frontage requirements as stated in the Subdivision Regulations.

The site front McVay Drive to the West and Halls Mill Road to the South. McVay Drive is a minor street, provided with curb and gutter, and Halls Mill Road is a collector street. Both streets are depicted with adequate rights-of-way. The plat should be modified to reflect dedications at the intersection of Belvedere Circle West and Halls Mill Road and McVay Drive and Halls Mill Road to comply with Section V.B.16. of the Subdivision Regulations regarding curb radii.

As previously stated, the site is currently denied access to any roadway due to the plat restriction limiting the original subdivision to two shared curb cuts, the plat restrictions denying access to this lot to Halls Mill Road and to Belvedere Circle West, and the existing development on the other lots. Access was originally denied to Belvedere Circle West for several reasons – mainly, that Belvedere Circle West is a residential street, because of the limited amount of frontage along

the street, and also the proximity of the frontage to the intersection of Belvedere Circle West and Halls Mill Road. For these reasons, access to Belvedere Circle West should continue to be denied. Regarding Halls Mill Road, access denial was never required by the Planning Commission, however there was discussion of denial of access to Halls Mill Road at the Planning Commission meeting. Ultimately, the developer decided to deny access to Halls Mill Road and placed the condition on the Final Plat. Given the amount of frontage along Halls Mill Road, the site should be limited to one curb cut to Halls Mill Road. Regarding McVay Drive, the site should be limited similarly to one curb cut to McVay Drive. The size, location, and design of all curb cuts should be approved by Traffic Engineering and meet AASHTO standards. As having curb cuts on two intersecting streets could result in cut-thru traffic, appropriate measures should be taken to prevent such activity. Traffic Engineering has commented that "access to Halls Mill Road should be limited to right in/right out only or denied," as such, this note should be placed on the plat should access to Halls Mill Road be approved by the Commission.

The 25-foot minimum building setback is depicted along the McVay Drive right-of-way and a 20-foot minimum building setback is depicted along Halls Mill Road and Belvedere Circle West. This 20-foot setback is allowed under Section 64-4.D.3. of the Zoning Ordinance, and was also approved with the original lot configuration. As such, these setbacks should be approved. The size of the lot is depicted in square feet on the plat. These items should be depicted on the Final Plat, if approved.

Finally, the geographic area defined by the city of Mobile and its planning jurisdiction, including this site, may contain Federally-listed threatened or endangered species as well as protected non-game species. Development of the site must be undertaken in compliance with all local, state and Federal regulations regarding endangered, threatened or otherwise protected species.

RECOMMENDATION

Rezoning: Based upon the preceding, the Rezoning request is recommended for approval subject to the following conditions:

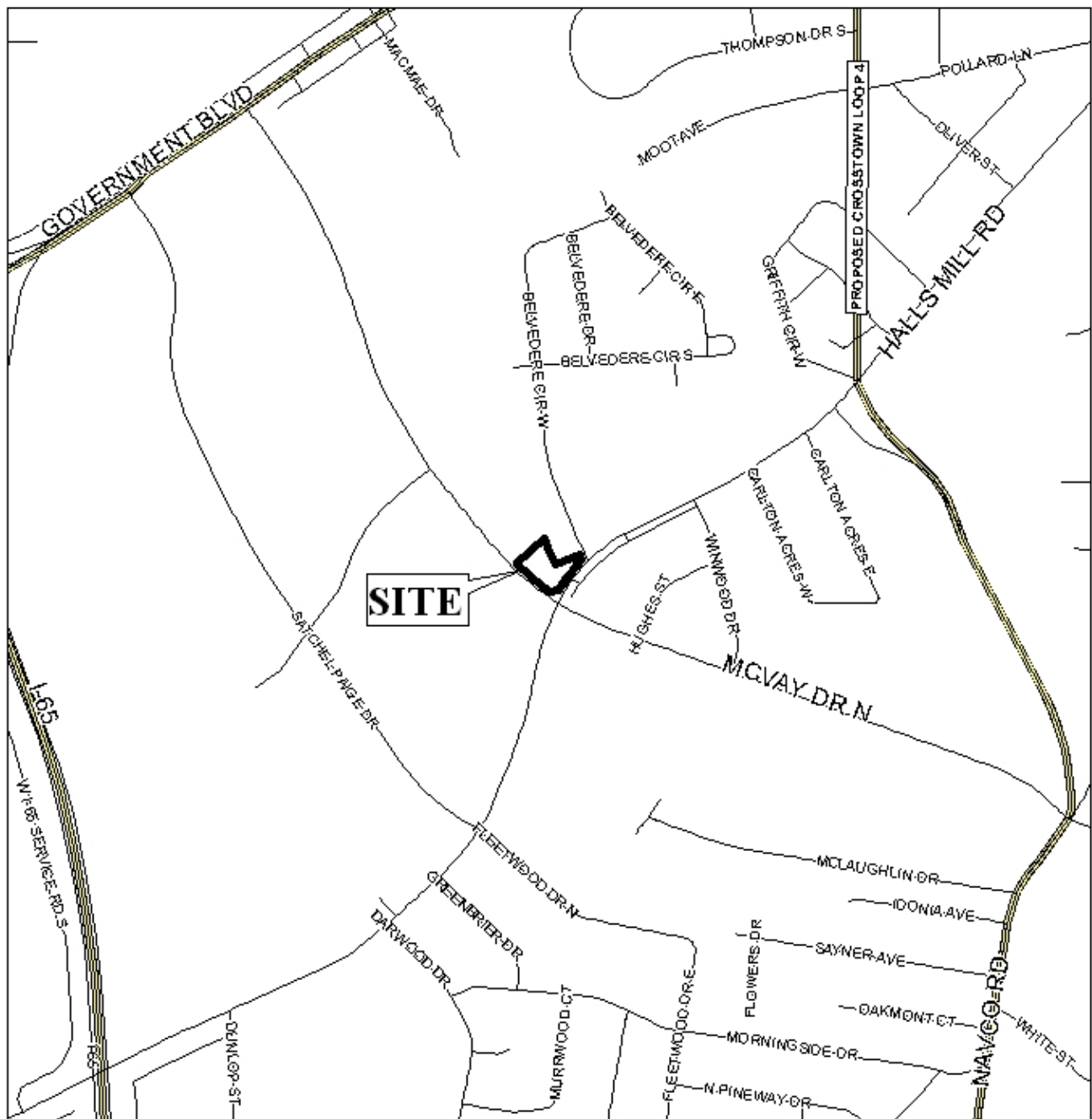
- 1) completion of the Subdivision process;
- 2) provision of a privacy fence in compliance with Section 64-4.D.1.A. of the Zoning Ordinance where the site abuts residentially zoned property;
- 3) provision of sufficient overstory, evergreen tree plantings (such as Live Oaks or Bald Cypress) so as to provide a continuous buffer in the 10 foot buffer area between the required privacy fence and the development;
- 4) prohibition of parking within the buffer area;
- 5) prohibition of commercial signage on the eastern portion of the lot along Belvedere Circle West and Halls Mill Road;
- 6) denial of direct access to Belvedere Circle West;
- 7) limitation of access to Halls Mill Road to right in/right out curb cut with the size, design, and exact location of the curb cut to be approved by Traffic Engineering and conform to AASHTO standards;
- 8) full compliance with tree plantings and landscaping requirements;

- 9) full compliance with Urban Forestry comments: *“Preservation status is to be given to the 48” Live Oak Tree located along Halls Mill Road. Any work on or under this tree is to be permitted and coordinated with Urban Forestry; removal to be permitted only in the case of disease or impending danger;”*
- 10) full compliance with Engineering comments: *“On plat, refer to flood zone “X” Out as “X-Unshaded”. Must comply with all storm water and flood control ordinances. Any increase in impervious area in excess of 4,000 square feet will require detention. Sidewalks need to be shown along property lines adjacent to public streets or apply for a sidewalk waiver. Any work performed in the right of way will require a right of way permit. Drainage from any new dumpster pads cannot discharge to storm sewer; must have connection to sanitary sewer;”* and
- 11) full compliance with all municipal codes and ordinances.

Subdivision: With a waiver of Section V.D.9. of the Subdivision Regulations regarding minimum building lines, along Halls Mill Road and Belvedere Circle West only, the Subdivision request is recommended for approval subject to the following conditions:

- 1) completion of the rezoning process;
- 2) dedication sufficient to comply with Section V.B.16. of the Subdivision Regulations regarding curb radii;
- 3) placement of a note on the Final Plat denying Lot 1 direct access to Belvedere Circle West;
- 4) placement of a note on the Final Plat stating that Lot 1 is limited to one curb cut to McVay Drive and one right in/right out curb cut to Halls Mill Road, with the size, design, and exact location of each curb cut to be approved by Traffic Engineering and conform to AASHTO standards;
- 5) taking of appropriate measures to prevent cut-thru traffic in the parking lot as approved by Traffic Engineering;
- 6) retention of the 25-foot minimum building line along McVay Drive and the 20-foot minimum building line along Halls Mill Road and Belvedere Circle West;
- 7) retention of the lot area size, in square feet, on the Final Plat;
- 8) full compliance with Urban Forestry comments: *“Preservation status is to be given to the 48” Live Oak Tree located along Halls Mill Road. Any work on or under this tree is to be permitted and coordinated with Urban Forestry; removal to be permitted only in the case of disease or impending danger;”*
- 9) full compliance with Engineering comments: *“On plat, refer to flood zone “X” Out as “X-Unshaded”. Must comply with all storm water and flood control ordinances. Any increase in impervious area in excess of 4,000 square feet will require detention. Sidewalks need to be shown along property lines adjacent to public streets or apply for a sidewalk waiver. Any work performed in the right of way will require a right of way permit. Drainage from any new dumpster pads cannot discharge to storm sewer; must have connection to sanitary sewer;”* and
- 10) placement of a note on the final plat stating that development of the site must be undertaken in compliance with all local, state and Federal regulations regarding endangered, threatened or otherwise protected species; and
- 11) full compliance with all municipal codes and ordinances.

LOCATOR MAP



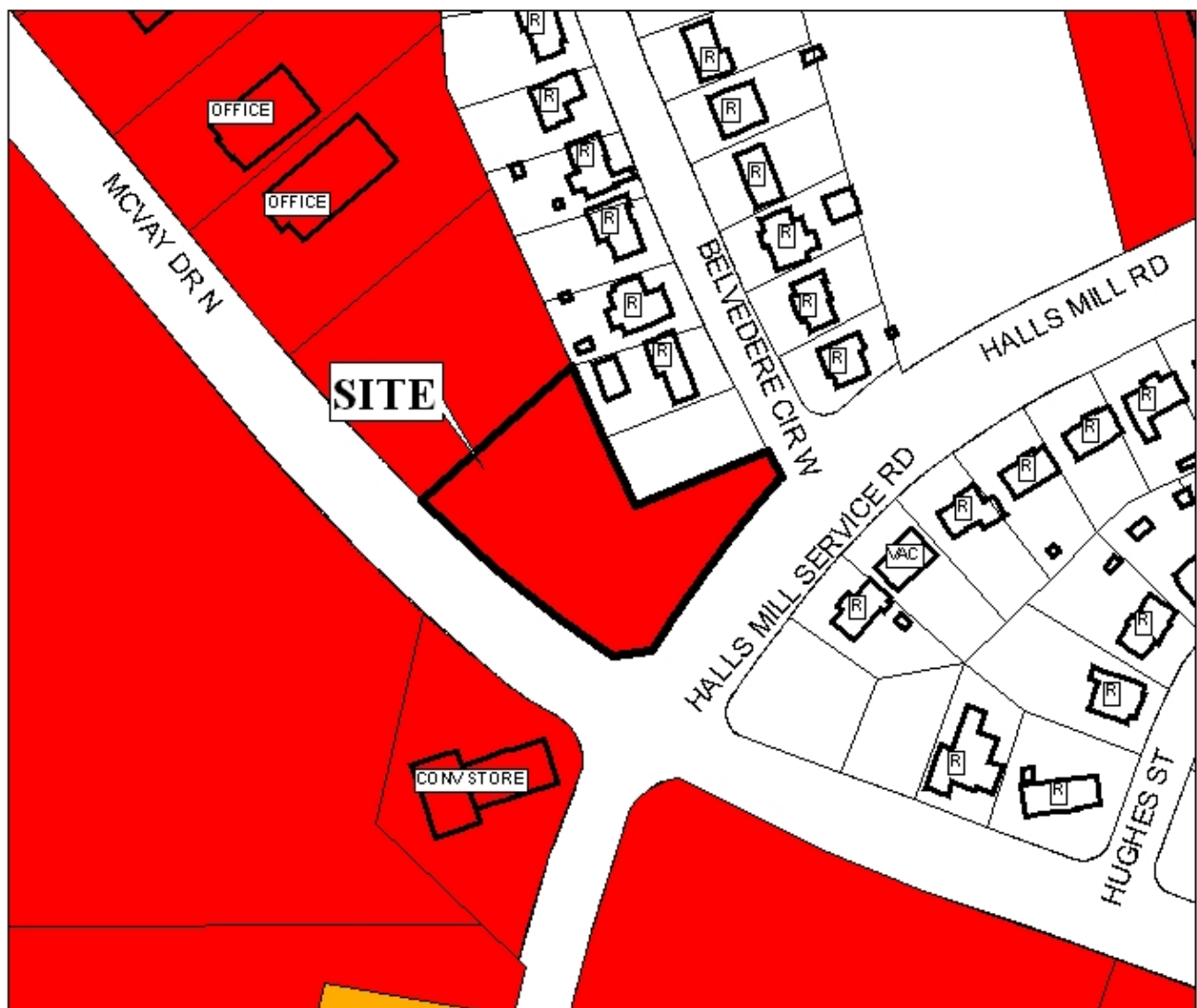
APPLICATION NUMBER 17 & 18 DATE January 6, 2011

APPLICANT The Broadway Place

REQUEST Subdivision, Rezoning from B-3 to B-3

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NTS

PLANNING COMMISSION VICINITY MAP - EXISTING ZONING



Commercial sites are located to the north and south of the site
Single-family residential units are located to the east 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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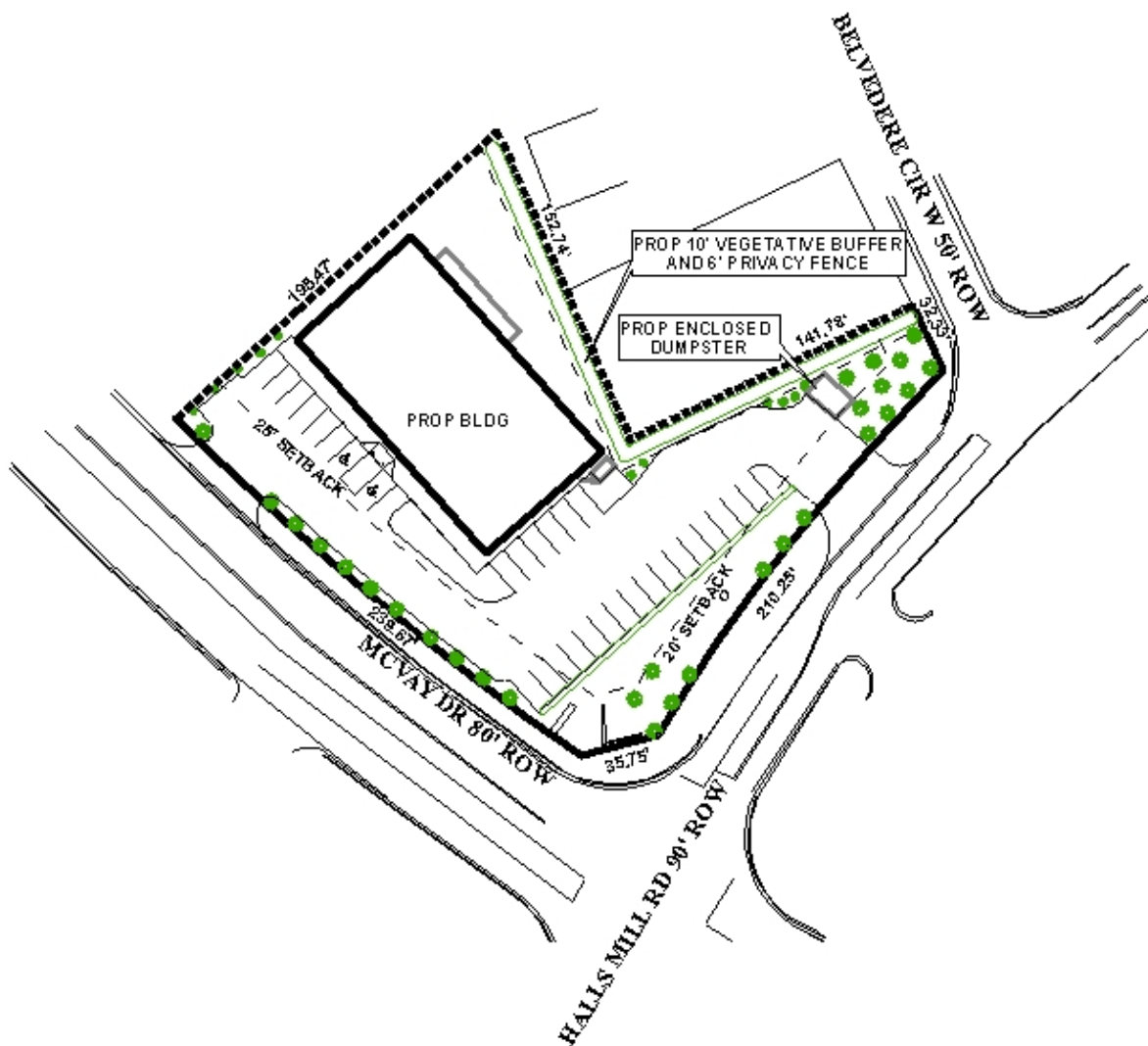
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SITE PLAN



The site plan illustrates the proposed development.

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