

ZONING BOARD OF ADJUSTMENT STAFF REPORT

July 26, 2021

**ZBA-38-20**

**GENERAL INFORMATION**

**Property Owner (X) Petitioner (X)**

B&E Enterprises, LLC

**Requested Action and Purpose**

A variance from the billboard regulations

**Location and Existing Zoning**

1241 McFarland Boulevard East. Zoned MX-5. (Council District 5)

**Size and Existing Land Use**

Approximately 0.81 acres, Business

**Surrounding Land Use and Zoning**

North: Vacant Lot, MX-5

East: Vacant Lot, MX-5

South: 13<sup>th</sup> St E

West: McFarland Blvd E

**Applicable Regulations**

[Sec. 24-138.](#) - Nonconforming, illegal and abandoned signs.

(2) *Abandoned signs.* Except as otherwise provided in this article, any sign that is located on property which, for a period of greater than ninety (90) days, becomes vacant and unoccupied, pertains to a business which does not maintain a current business license, or pertains to a time, event or purpose which no longer applies, shall be deemed to have been abandoned.

Any abandoned sign shall be prohibited and shall be removed by the owner of the sign or the owner of the property. The frame of an abandoned sign shall not be required to be removed if it conforms to all applicable terms contained in these regulations (including the sign face area for sign replacement yielded by such frame).

Any sign structure which supported an abandoned sign and which structure conforms to all applicable terms contained in these regulations shall be allowed to remain in place. However, in the event a sign structure which supported or supports an abandoned sign is inconsistent with any term contained in these regulations (including the sign face area for sign replacement yielded by the frame), then the sign structure and frame shall be either altered to comply with the terms contained herein or removed by the owner of such structure or property.

(5) *Variations.* It is the explicit intent that this section be enacted to accomplish the purposes as set forth in subparagraph (1) and any variance granted by the zoning board of adjustment would be detrimental to these purposes. Accordingly, the board of adjustment should only grant a variance for an extreme hardship. Acts of God and economic conditions shall not be considered hardships for purposes of this subsection.

(Ord. No. 7178, 12-4-07)

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Sec. 24-304. - Permitted use table.

Off-Site signs are not allowed by right or special exception in the the MX-5 zoning district.

**SUMMARY**

The petition for a variance from the billboard regulations at 1241 McFarland Boulevard East was first heard by the Zoning Board of Adjustment on August 24, 2020 and has been continued each month since.

The petitioner is requesting a variance from the billboard regulations to allow the continued use of a billboard that has been deemed abandoned by the city. Until recently, the board at 13th Street East and McFarland Boulevard East has functioned as a legal nonconforming billboard (Sec. 24-138(1)) – it was/is nonconforming because off-site signs are not permitted in areas zoned MX-5 (or any other MX- district).

Staff received a complaint about the board located at 13th Street East and McFarland Boulevard East on March 23. The board was in a state of disrepair and the power meter had been removed. We documented it and the Zoning Officer determined that the board was not advertising anything in its state (due to the status of the vinyl).

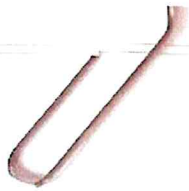
On June 22, a period greater than 90 days had transpired where the sign sat vacant and unoccupied (See Sec. 24-138(2)), and the Zoning Officer, determined that the sign was abandoned and staff began the process to get the sign removed.

Office of Urban Development, Planning Division: No comment

Office of Urban Development, Building and Inspections Division: No comment

Infrastructure and Public Services, Engineering Division: No comment

Fire and Rescue Department, Fire Administration: No comment



ZONING BOARD OF ADJUSTMENT

PETITION APPLICATION

Last Updated, Oct 2019

Please complete all of the following required fields:

Location of Petitioned Property
Address: 1241 McFarland Blvd., Tuscaloosa, Alabama 35404

Property Owner
Name: B&E Enterprises, LLC
Address: 13th and McFarland Exchange, L...

Phone: 205-643-0404
Address: 361 Summit Blvd., Suite 110, Birmingham, Alabama

Email: robert@cgppe.com

ZIP Code: 35243

Petitioner (if different from owner)
Name:
Phone:

Email:

Address:

ZIP Code:

The Petitioner requests the following item(s) from the Zoning Board of Adjustment:

A special exception is a conditional use which the zoning ordinance expressly permits under conditions specified in the zoning ordinance. A variance is a deviation from the regulations in the zoning ordinance which requires proof of an unnecessary hardship. An appeal is a formal challenge of the zoning officer's ruling.

- Special Exception, Use Variance, Variance, Short-Term Rental, Appeal Zoning Officer's ruling

Briefly describe the variance, special exception, and/or appeal being requested:
See the attached Supplemental Page Paragraph #1

Certification of Applicant

I certify that the foregoing facts, to the best of my knowledge, are true and correct and that except for the exception, variance, or appeal requested in this petition, the proposed construction and use complies with all requirements for the zoning district in which the property is located.

- For all requests for any variance from or special exception to a zoning requirement pertaining to a dimensional requirement or the site, a scaled site plan and/or building elevation produced by a registered land surveyor, professional engineer, or architect shall be required.
Requests for an exception from fence requirements must depict proposed location and design of fence.
Any request which will not be represented by the property owner at the public hearing must be accompanied by a designation of agent form.

Print Name: Patrick Ague

Signature:

Handwritten signature of Patrick Ague

Please complete the applicable fields prior to application submission:

**Answer the following for ALL requests:**

Describe the reasons for the request and, if requesting a special exception, any extra related information. (e.g. number of parking spaces, hours of operation, etc.)

See attached Supplemental Page Paragraph #2

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**Answer the following for VARIANCE requests ONLY:**

The petitioner must specifically state a hardship for the variance. Explain the ways in which the zoning regulation creates a hardship on the property. When a variance is at issue, the primary consideration is whether a literal enforcement of a zoning ordinance will result in unnecessary hardship. Explain any special circumstances or conditions that are peculiar to the land or buildings because of which a strict application of the ordinance would deprive the applicant of the reasonable use of such land or building.

See attached Supplemental Page Paragraph #3

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Explain how the variance request is in harmony with the general purpose and intent of the regulations imposed by this ordinance on the district in which it is located and shall not be injurious to the neighborhood or otherwise detrimental to the public welfare.

See attached Supplemental Page Paragraph #4

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**PLEASE SUBMIT AN ELECTRONIC COPY OF THIS APPLICATION AND ANY NECESSARY SUPPORTING MATERIALS TO:**

Office of Urban Development:  
Planning Division

2201 University Boulevard, Annex III  
Tuscaloosa, AL 35401

Email: [zba@tuscaloosa.com](mailto:zba@tuscaloosa.com)

**SUBMIT FORM**

**FOR OFFICE USE ONLY:**

ZBA Case Number: \_\_\_\_\_

Submission Date: \_\_\_\_\_

Zoning District: \_\_\_\_\_

Hearing Date: \_\_\_\_\_

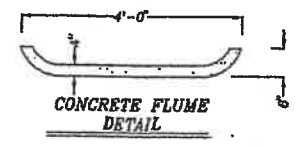
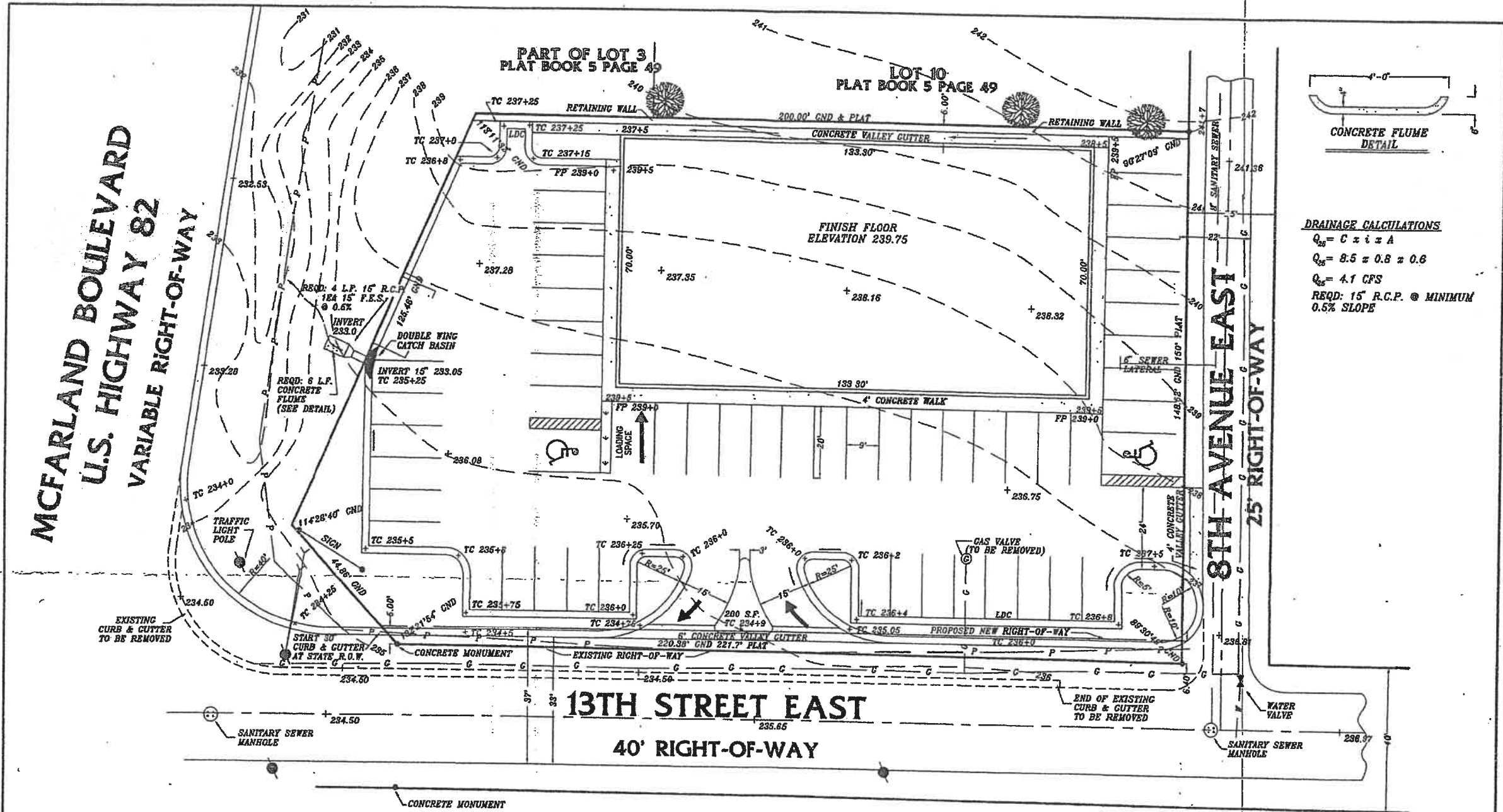


SUPPLEMENTAL PAGE

B&E Enterprises, LLC & HTB 13<sup>TH</sup> Street and McFarland Exchange, LLC  
1241 McFarland Blvd., Tuscaloosa

1. The vinyl located on the sign structure was displaced and ultimately removed at the request of the City. The time of this displacement was +/- March 23, 2020. The vinyl was removed on April 17, 2020. The City determined the billboard was "not advertising" on March 23. However, the proper standard as set forth in [Sec. 24-138\(2\)](#) of the Tuscaloosa AL Code of Ordinances, which expressly provides that 90 day period starts when the billboard is "vacant and unoccupied." While the billboard tenant's vinyl should have been repaired/replaced on March 23, it was not "vacant and unoccupied." As it regards the timing of repairs, as a result of the COVID-19 outbreak, the ability to install new vinyl on the billboard has been delayed. The initial delay was due to suppliers in China being shut down. This was further delayed by the 24-Hour Curfew issued by the Mayor on March 25, 2020. The Governor of Alabama then issued a State at Home Order on April 3, 2020. These orders were lightened on May 1, 2020. The time leading up to the Governor's Order being lightened, a backlog was created. This backlog further delayed our contractor's ability to obtain supplies to create the vinyl and graphics to be installed. It's our estimation the Mayor's curfew and Governor's order, followed by the ensuing backlog, created a 60 days delay in replacing the vinyl.
2. This billboard structure was conforming at the time it was installed in mid-1990s and remains a conforming billboard to this day. Pursuant to Sec. 24-135(4) of the Tuscaloosa AL Code of Ordinances: "Conforming billboards currently existing upon the date of the adoption of this article shall thereafter be deemed to be conforming billboards. Nonconforming billboards currently existing upon the date of the adoption of this article shall thereafter be deemed to be nonconforming billboards and all billboards shall be subject to the provisions of this article." The City's position is that the billboard became a legal nonconforming billboard when Tuscaloosa Forward Plan was fully implemented in 2012. As part of the Tuscaloosa Forward Plan enactment, the zoning of the property in which the billboard is located changed to MX-5. As it's been explained recently, billboards are not permitted in MX-5 zones. Our hardship is the zoning change that followed the April 27, 2011 tornado. The change in zoning was not something implemented by the ownership. If this board is taken down, the ability to install a new billboard at this property is no longer available.
3. The billboard is located on a major roadway, McFarland Blvd. McFarland Blvd. contains more than three (3) moving lanes of traffic. Major roadways with high traffic are ideal location for billboards. The presence of this billboard on a US Highway, following the redevelopment of this area post-April 2011 tornado, is in keeping with the neighborhood. Additionally, this size of this billboard is 12' x 25' which is less than one-half the typical billboard size (14'x'48'). In addition to its size, the existing sign structure is the only one located on the property. The ownership has not allowed excessive competition or multiple signs to be installed. This board also allows the minimization of clutter and avoids creating a hazard for motorist.

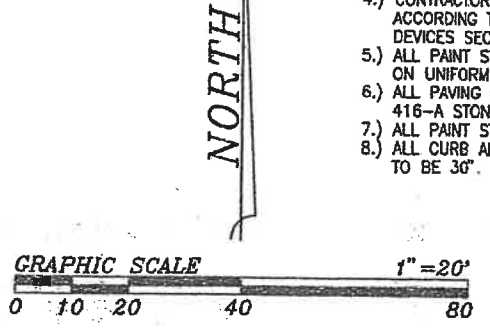
**MCFARLAND BOULEVARD  
U.S. HIGHWAY 82  
VARIABLE RIGHT-OF-WAY**



**DRAINAGE CALCULATIONS**  
 $Q_c = C \times i \times A$   
 $Q_c = 8.5 \times 0.8 \times 0.6$   
 $Q_c = 4.1 \text{ CFS}$   
 REQD: 15" R.C.P. @ MINIMUM  
 0.5% SLOPE

- NOTES:**
- 1.) CONTRACTOR RESPONSIBLE FOR THE LOCATION OF ALL UTILITIES.
  - 2.) ALL CONCRETE TO BE 3000 PSI AT 28 DAYS.
  - 3.) ALL AREAS DISTURBED SHALL HAVE 4 INCHES OF TOPSOIL APPLIED AND GRASSED ACCORDING TO STATE SPECIFICATIONS.
  - 4.) CONTRACTOR TO MAINTAIN TRAFFIC CONTROL DEVICES DURING CONSTRUCTION ACCORDING TO THE ALABAMA MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES SECTION G.
  - 5.) ALL PAINT STRIPPING SHALL BE IN ACCORDANCE WITH THE ALABAMA MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES SECTION J.
  - 6.) ALL PAVING ON STATE RIGHT-OF-WAY & 13TH STREET TO BE 200 LB/SY 416-A STONE MIX OVER MINIMUM 5" 327-A BLACK BASE.
  - 7.) ALL PAINT STRIPPING TO BE THERMO-PLASTIC, IF REQUIRED.
  - 8.) ALL CURB AND GUTTER INSTALLED ON STATE RIGHT-OF-WAY TO BE 30".

- PARKING NOTES**
- 1.) BUILDING - 9331 SQUARE FEET  
PARKING SPACES SHOWN - 53
  - 2.) TOTAL PARKING SPACES REQUIRED FOR PROFESSIONAL OR SIMILAR - 37
  - 3.) FOR RETAIL OR SIMILAR UP TO 40% OF TOTAL BUILDING AREA MAY BE UTILIZED FOR PARKING SHOWN.  
 9331 S.F. x 60% FOR PROFESSIONAL OFFICES = 22 SPACES  
 9331 S.F. x 40% FOR RETAIL OR SIMILAR = 31 SPACES  
**TOTAL 53 SPACES**



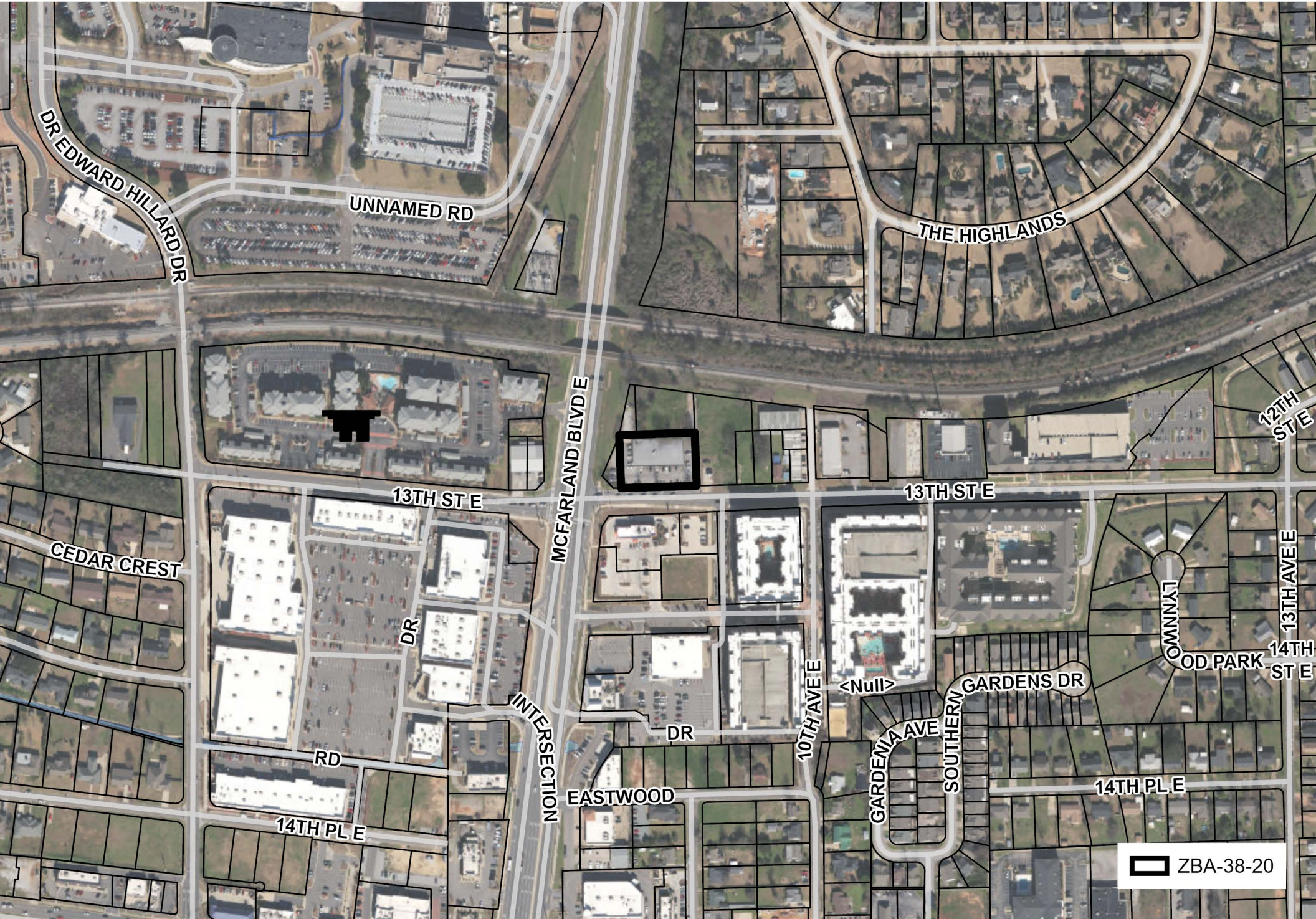
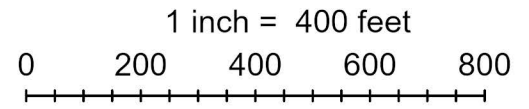
**LEGEND**

PHONE	P	P	P	TOP OF CURB GRADE	TC 200+6
GAS	G	G	G	TOP OF PAVEMENT GRADE	FP 201+8
WATER	W	W	W	SPOT FINISH GRADE	199+6
EXISTING CONTOUR	240	240	240	LIP DOWN CURB	LDC
EXISTING SPOT ELEVATION (TYPICAL)	+	239.80			

96-10-029			
<b>SITE PLAN</b>			
<b>LOTS 6, 7, 8, 9 &amp; PART OF LOT 5</b>			
<b>BLOCK "B"</b>			
<b>TUSCALOOSA HEIGHTS</b>			
McGUIRE AND ASSOCIATES, INC.			
Consulting Engineers and Land Surveyors			
600 29th Ave.		P.O. Box 2630	
Tuscaloosa, Alabama			
FILE NAME	9610-029	SCALE 1"=20'	DRAWN JCC
DATA FILE		DATE DEC 96	CHECKED JHM
DAT96 ACT2			
		FB P	DWG NO.
			<b>203-96</b>



# ZBA-38-20 Vicinity Map



 ZBA-38-20



# ZBA-38-20 Aerial Map

1 inch = 50 feet  
0 25 50 75 100



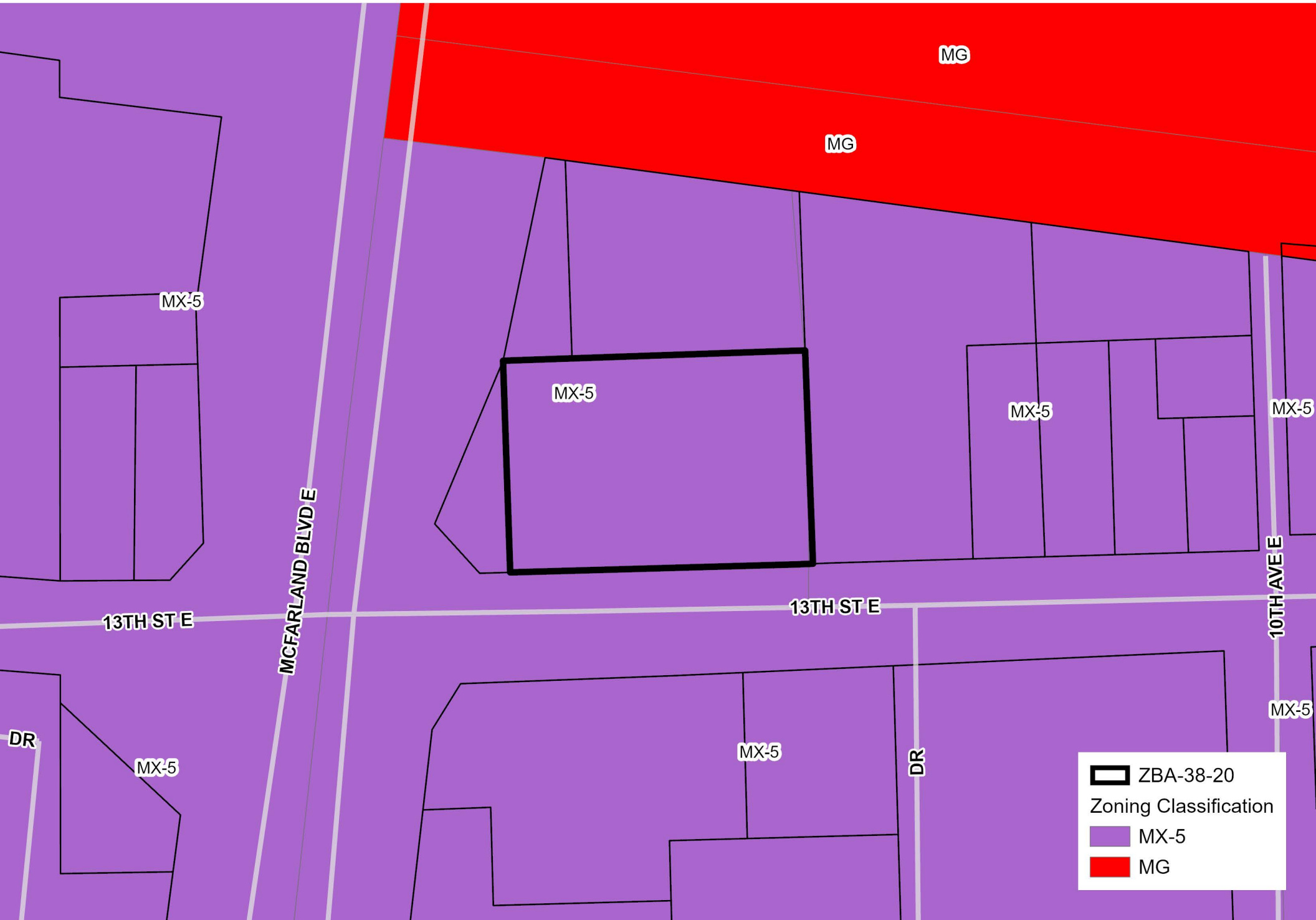
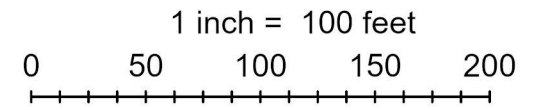
McFARLAND BLVD E

13TH ST E

 ZBA-38-20



# ZBA-38-20 Zoning Map



	ZBA-38-20
Zoning Classification	
	MX-5
	MG





WE BELIEVE  
End us on  
9/10/20

07/09/2020 9:12 AM





03/23/2020 12:56 PM