

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: July 6, 2020****CASE NUMBER**

6330/6170

APPLICANT NAME

Merchants Alabama

LOCATION

250 Yeend Street
(North side of Yeend Street extending to the South side of
Baker Street, 400'± West of the intersection of Yeend
Street and Baker Street)

VARIANCE REQUEST

SETBACK: Front Yard Setback Variance to allow the
construction of elevated emergency exits and associated
stairs within a required front yard setback in an I-2, Heavy
Industrial District.

**ZONING ORDINANCE
REQUIREMENT**

SETBACK: The Zoning Ordinance requires any structure
which exceeds three (3) feet in height to meet all required
setbacks in an I-2, Heavy Industrial District.

ZONING

I-2, Heavy Industrial District

AREA OF PROPERTY

18.02± Acres

**CITY COUNCIL
DISTRICT**

District 3

**ENGINEERING
COMMENTS**

If the proposed variance is approved the applicant will need
to have the following conditions met:

1. The proposed improvements shown on the submitted plans for the emergency exits/stairs will be required to be included in the As-Built submittal for the current Land Disturbance Permit – ENG-035833-2019.
2. The existing drainage patterns and surface flow characteristics should not be altered so as to have a negative impact on any adjoining properties or any public rights-of-way.
3. Any and all proposed land disturbing activity within the property will need to be in conformance with Mobile City Code, Chapter 17, Storm Water Management and Flood Control); the City of Mobile, Alabama Flood Plain Management Plan (1984); and, the Rules For Erosion and Sedimentation Control and Storm Water Runoff Control.
4. Applicant agrees to install adequate BMPs during construction to protect from sediment/pollutants leaving the site.

**TRAFFIC ENGINEERING
COMMENTS**

No comment.

**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 2015-116 and City Code Chapters 57 and 64). Private removal of trees in the right-of-way will require approval of the Mobile Tree Commission. Removal of heritage trees from a commercial site will require a tree removal permit.

FIRE**COMMENTS**

All projects within the City Limits of Mobile shall comply with the requirements of the City of Mobile Fire Code Ordinance. (2012 International Fire Code).

ANALYSIS

The applicant is requesting a Front Yard Setback Variance to allow the construction of elevated emergency exits and associated stairs within a required front yard setback in an I-2, Heavy Industrial District; the Zoning Ordinance requires any structure which exceeds three (3) feet in height to meet all required setbacks in an I-2, Heavy Industrial District.

The site has been given a Heavy Industry (HI) land use designation, per the Future Land Use Plan and Map adopted by the Planning Commission. The Future Land Use Plan and Map complements and provides additional detail to the Development Framework Maps in the Map for Mobile, adopted by the Planning Commission at its November 5, 2015 meeting.

This land use designation mostly applies to larger parcels primarily developed to high-impact industrial activity which is preferably removed from residential and commercial uses. Light industry, industrial business or heavy commercial lands may separate heavy industry from other land uses.

Heavy industrial areas include collection, treatment, and manufacturing processes which use raw materials, are distinguished by the presence of noise, vibration, and/or odors, and benefit from easy access to a multimodal freight transportation network. Certain types of heavy industry are characterized by low building coverage and activities that rely on large areas of outdoor storage of raw material stockpiles and/or waste-product disposal areas, storage tanks, pipelines, and transportation yards to handle the transfer of heavy materials. The outdoor storage areas should be screened as much as possible by the nature of the stored materials.

Land designated as HI may be underdeveloped due to the presence of wetlands on portions of the parcel. In these cases, the wetlands may serve to buffer surrounding uses from the potential impacts of the heavy industrial use. Undeveloped areas of HI parcels that have tree cover may be used as buffering between the heavy industrial use and other uses. Where buffers do not exist naturally, they should be provided as spelled out in the zoning and subdivision regulations. Open areas reserved for dredge disposal are also designated as HI and may contain wetlands.

In Mobile, port terminal facilities, docks, shipyards, drydocks, etc., are mostly owned by the State of Alabama. Although not subject to local zoning, these facilities are shown as heavy industrial uses in the FLUM.

It should be noted that the Future Land Use Plan and Map components of the Map for Mobile Plan are meant to serve as a general guide, not a detailed lot and district plan. In many cases the designation on the new Future Land Use Map may match the existing use of land, but in others the designated land use may differ from what is on the ground today. As such, the Future Land Use Plan and Map 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, where applicable, the zoning classification.

The Zoning Ordinance states that no variance shall be granted where economics are the basis for the application; and, unless the Board is presented with sufficient evidence to find that the variance will not be contrary to the public interest, and that special conditions exist such that a literal enforcement of the Ordinance will result in an unnecessary hardship. The Ordinance also states that a variance should not be approved unless the spirit and intent of the Ordinance is observed, and substantial justice done to the applicant and the surrounding neighborhood.

Variances are not intended to be granted frequently. The applicant must clearly show the Board that the request is due to very unusual characteristics of the property and that it satisfies the variance standards. What constitutes unnecessary hardship and substantial justice is a matter to be determined from the facts and circumstances of each application.

The applicant states:

The site in question is an 18.02 ± acre site at 250 Yeend Street, Mobile, AL 36603. The property is across Baker Street from the entrance to the Alabama State Port Authority Container Terminal. The applicant has recently acquired the property from the Alabama State Port Authority and is currently constructing a 295,761 square foot temperature controlled international distribution center (cold storage warehouse) in order to support the Port of Mobile's international trade. The facility will support both import and export of temperature-controlled food products and juices. Much of the product passing through the warehouse will be destined to or originating from the State of Alabama. The subject project will rely heavily on the proximity to the Container Port and the Interstate and will anticipate, initially, 50 – 80 trucks per day into and out of the facility. Once at full capacity and operation, the facility will be serviced by upwards of 100 trucks per day.

The site is bounded on the North by Baker Street and on the West and South by Yeend Street (a portion of which was vacated several years back). The parcel is somewhat challenged as there are wetlands and flood zones to the South and East. The site is also bisected, East to West, by a 48-inch forced main sewer line operated by Mobile Area Water and Sewer. These factors all play into how the building on the site is oriented and how parking and drainage is managed.

Additionally, it is anticipated that the Customs-Trade Partnership Against Terrorism Act (C-TPAT) will be expanded in the near future to incorporate import and export of food products in order to further protect the food supply chain. The applicant has designed this facility in anticipation of some of the requirements which may be included in that legislation in order to fully secure the site. These security measures include perimeter security fencing around the entire site, a single gated point of ingress and egress to the facility, and a patrol road/internal circulation road to allow internal circulation and monitoring throughout the entire campus.

In order to comply with the flood control ordinance, substantial amounts of fill were brought onto the site to meet the required base flood elevations for the building. As designed, the building was to have 14 emergency exits along the Baker Street side of the building. Each door would open to a stairway down to grade level. As currently designed, the emergency exit stairs would encroach into the building set back by 1.7 feet, but due to the fact that they are less than five feet in height from grade, such an encroachment would be allowed without the need for a variance from Section III. F(2)(e).

With the foundation of the building now in place, the owner and contractor have looked at the Baker Street elevations and have realized that, if built according to the plans, the emergency exit stairs would end at the same grade as the building but then immediately drop by more than 1.9 feet to the grade of the patrol road running between the rear of the building and Baker Street. The owner is concerned such a change in grade so close to the base of the emergency stair would create an unsafe situation for people exiting the building, particularly in an emergency situation. Additionally, the steep change in grade at the rear of the building will create potential issues with erosion control and will be difficult to landscape and maintain.

Given that the stairs have not yet been installed, the owner would like to remove the excess fill on the Baker Street side of the building and have the stairs built so as to end at the same grade as the patrol road. By removing that fill dirt, though, the height of the exit stairs would be in excess of the height allowed to be in the set back without a variance. If built to the grade of the patrol road, each of the emergency exit stairs would encroach 1.7 feet into the required 25-foot set back from Baker Street.

The owner believes that allowing such a variance would create a safer exit from the building in the event of an emergency, would reduce potential erosion at the base of the building, and would provide for a more uniform landscape along the Baker Street side of the building. As such, the owner requests a variance from Section III. F(2)(e) to allow up to a 2-foot encroachment into the 25 foot building set back line along the Baker Street frontage.

At its meeting on February 1, 2018, the Planning Commission approved a subdivision request creating one (1) legal lot of record from three (3) metes-and-bounds parcels and a vacated city right-of-way. On April 2, 2019, the Board of Adjustment approved a request for a Tree Planting

Location Variance to allow no frontage trees to be planted along the street frontage of the subject site. The Board did so with the following conditions:

- 1) the provision of heritage tree plantings within the interior of the site equal to the number ordinarily required along the public street frontages;
- 2) revision of the site plan to provide 67 interior heritage tree plantings;
- 3) coordination with the Arborist/Urban Forester to select 37 overstory and 30 understory trees for placement on the site; and
- 4) full compliance with all other municipal codes and ordinances.

At the same meeting on April 2, 2018, the Board denied a request for a Tree Quantity Variance to allow a reduced number of trees to be planted on site. It was determined that special conditions do not exist on site such that a variance from the required tree quantity was needed and that the site provides sufficient interior area in which to plant 67 heritage trees in mitigation for the lack of frontage trees.

Additionally, the Planning Commission approved a sidewalk waiver request at its meeting on April 5, 2018, to waive construction of a sidewalk along Baker Street, South Lawrence Street, and Yeend Street. Lastly, on October 1, 2018, the Board of Adjustment approved a six-month extension of the previously approved variance to allow for the issuance of permits. Land disturbance permits were issued for the project in May 2019, foundation only permits were issued in October 2019, and construction permits were issued in January 2020.

As stated in the narrative, the site is currently under construction and the applicant is requesting a front yard setback variance to allow 14 sets of stairs to encroach 1 foot 7.5 inches into the required 25-foot front yard setback along Baker Street. Each set of stairs descends from an emergency exit along the building's northern façade and as proposed would have a height of four (4) feet from grade to top of landing, one (1) foot taller than the three (3) foot maximum allowed by the Zoning Ordinance. Additionally, it would seem that compliance with the FEMA regulated flood zone elevation finished floor requirements contribute to the setback issue, in that elevation of the building floor puts the top of the landing higher than three feet from grade.

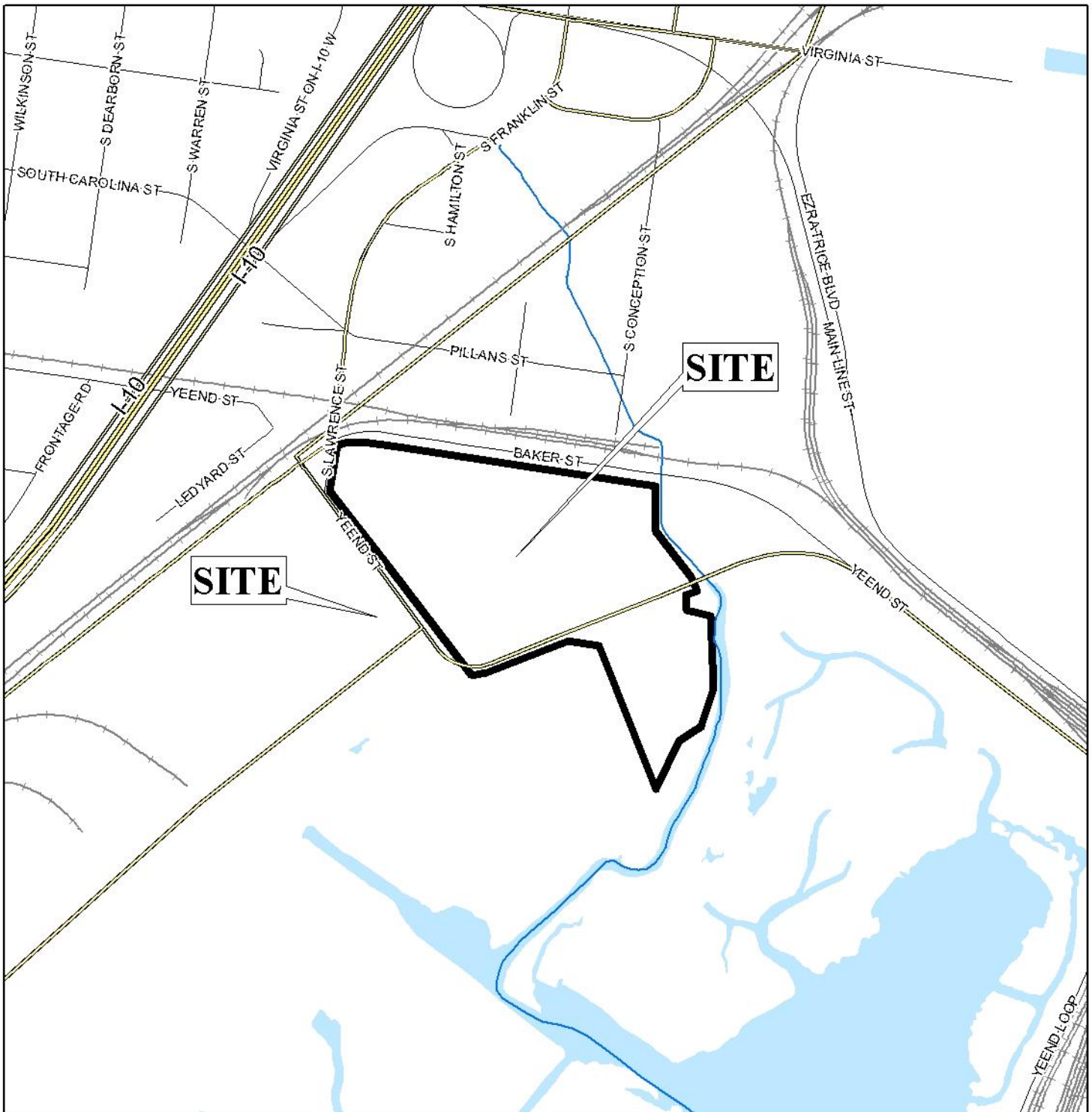
As the variance request is to allow emergency stairs to encroach in the front setback, and not the actual façade of the structure, and based on the safety concerns cited in an emergency situation, it may be appropriate to grant the applicant's request.

RECOMMENDATION: Based on the preceding, staff recommends to the Board the following findings of fact for Approval:

- 1) Approving the variance will not be contrary to the public interest as the properties which stand to be most affected by the request are separated from the subject property by an active railroad;
- 2) Special conditions were illustrated such that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship, as federal flood zone requirements create the create the required height of the floor of the building; and

- 3) The spirit of the chapter shall be observed and substantial justice shall be done to the surrounding neighborhood by granting the variance because the surrounding area is primarily heavy industrial used land and safe egress in an emergency is essential.

LOCATOR MAP



APPLICATION NUMBER 6330 DATE July 6, 2020

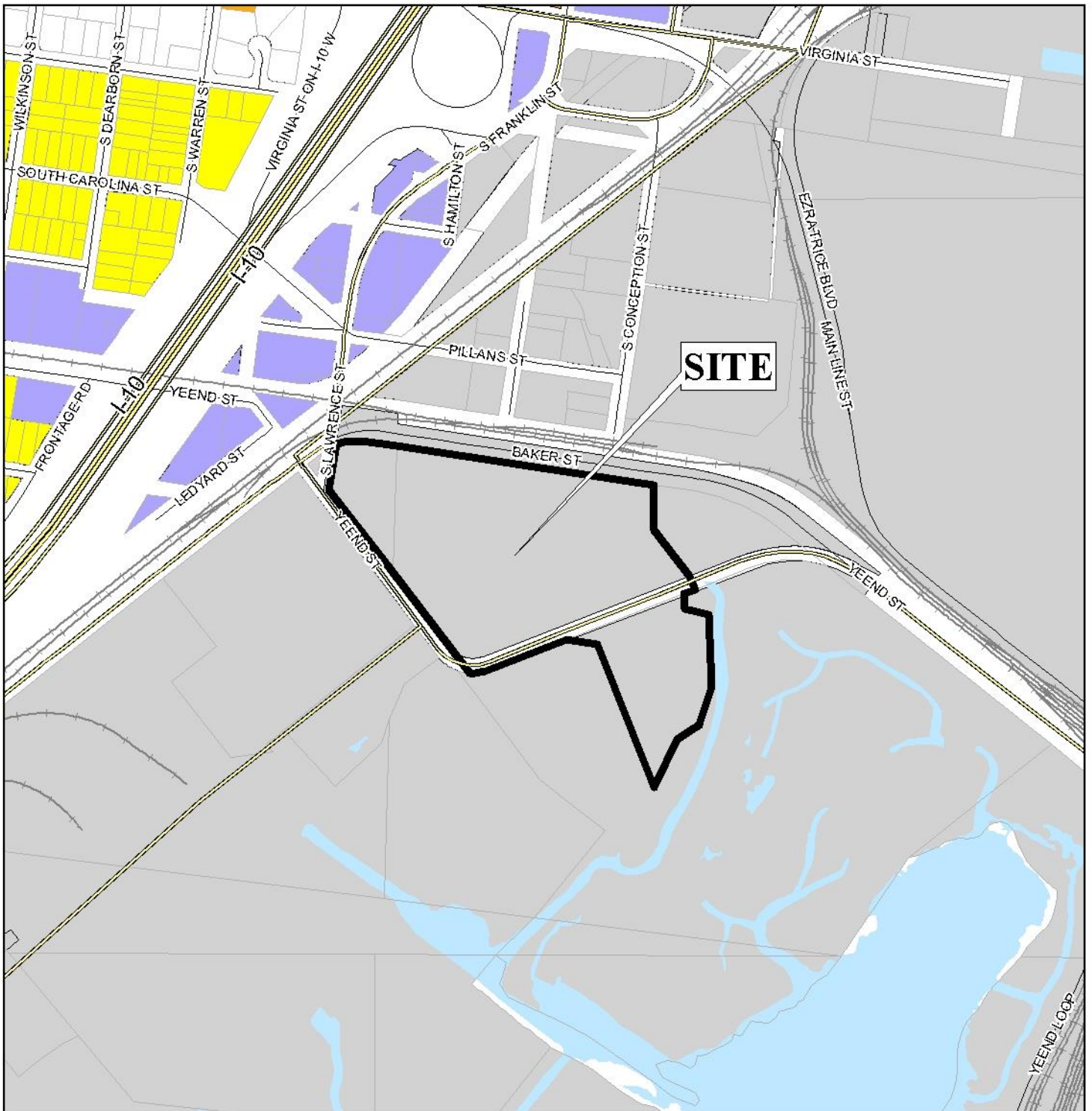
APPLICANT Merchants Alabama, LLC

REQUEST Front Yard Setback Variance



NTS

LOCATOR ZONING MAP



APPLICATION NUMBER 6330 DATE July 6, 2020

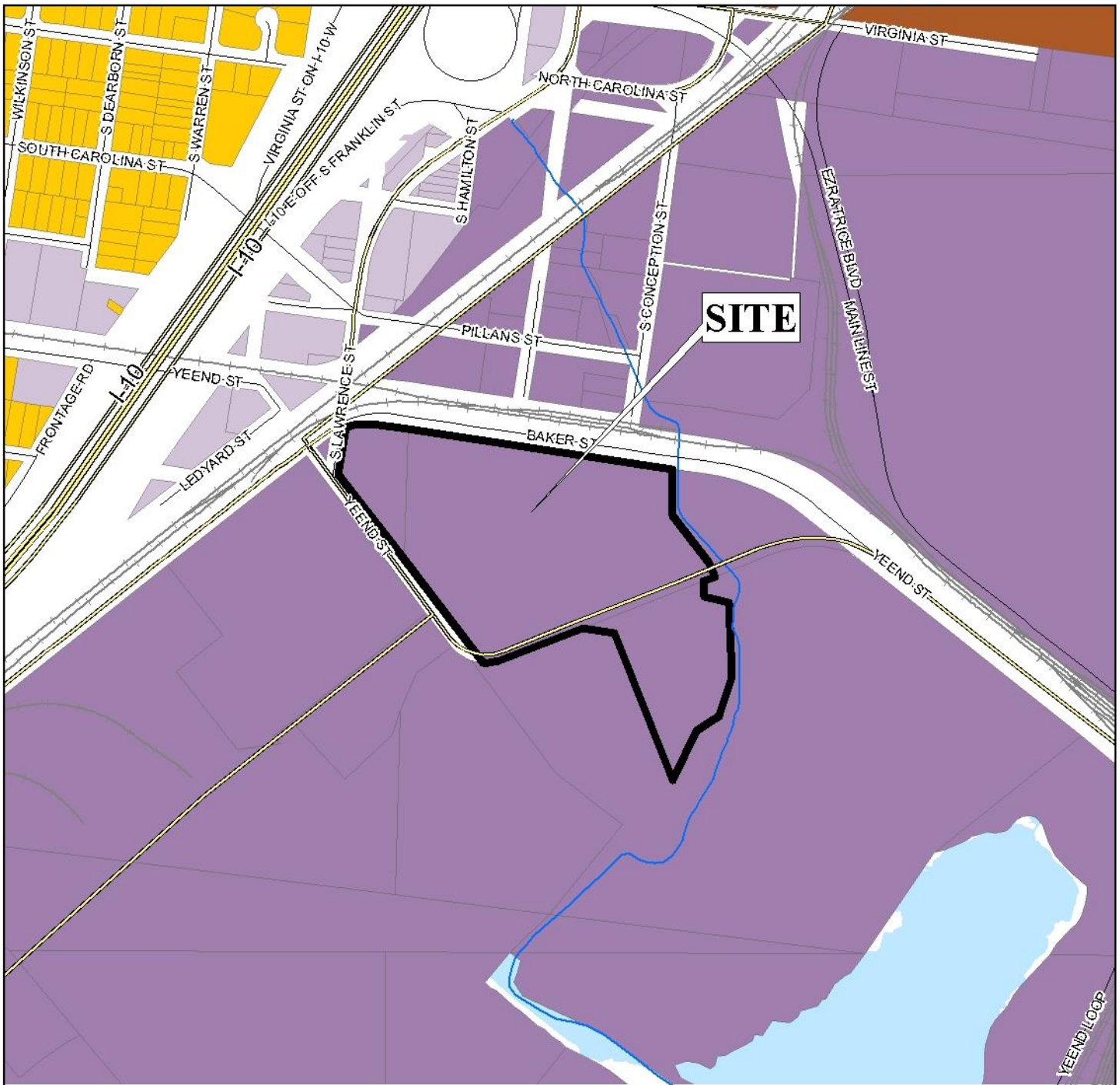
APPLICANT Merchants Alabama, LLC

REQUEST Front Yard Setback Variance



NTS

FLUM LOCATOR MAP



APPLICATION NUMBER 6330 DATE July 6, 2020

APPLICANT Merchants Alabama, LLC

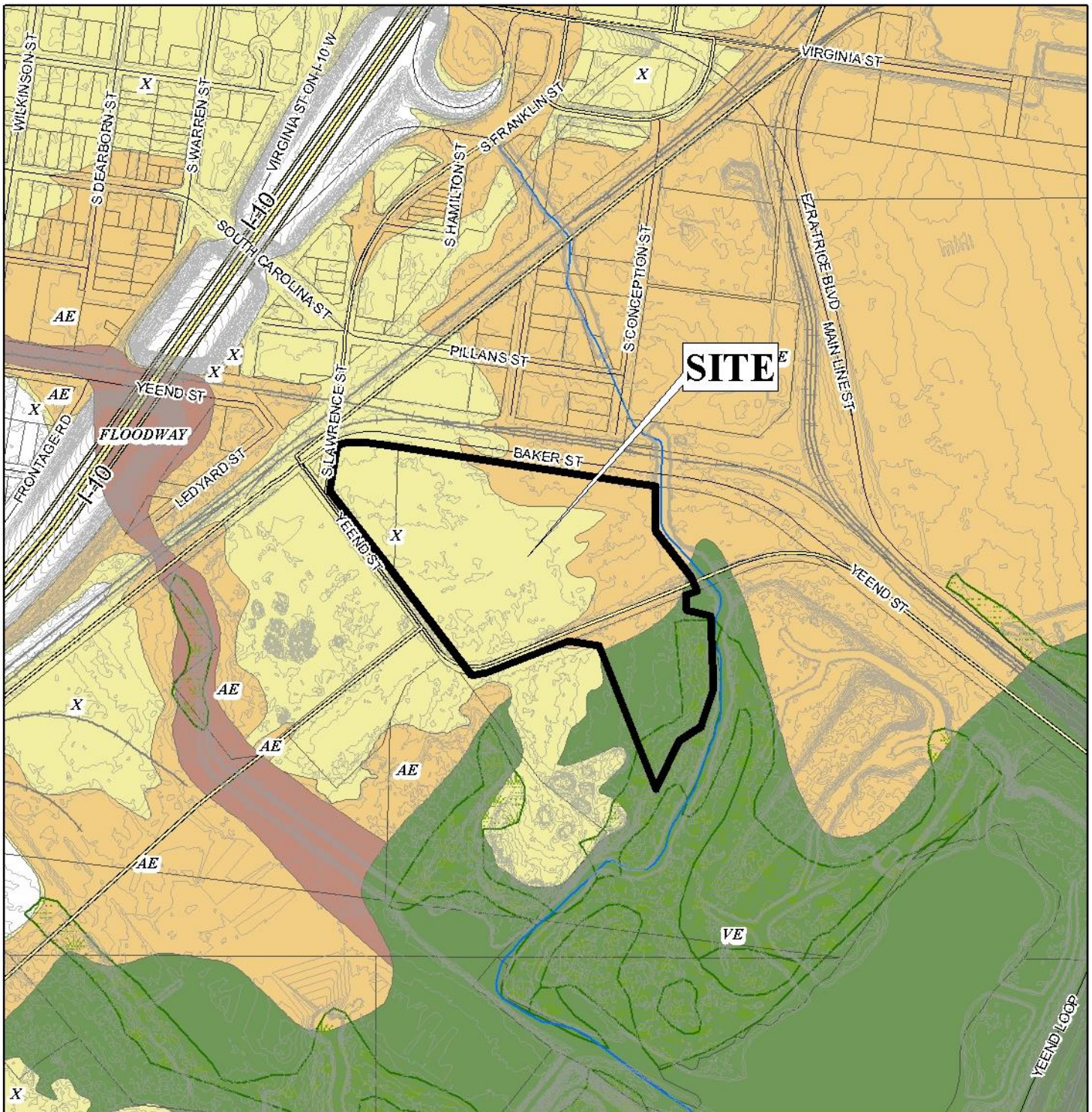
REQUEST Front Yard Setback Variance

Low Density Residential	Neighborhood Center - Traditional	Downtown Waterfront	Parks & Open Space
Mixed Density Residential	Neighborhood Center - Suburban	Light Industry	Water Dependent
Downtown	Traditional Corridor	Heavy Industry	
District Center	Mixed Commercial Corridor	Institutional	



NTS

ENVIRONMENTAL LOCATOR MAP



APPLICATION NUMBER 6330 DATE July 6, 2020

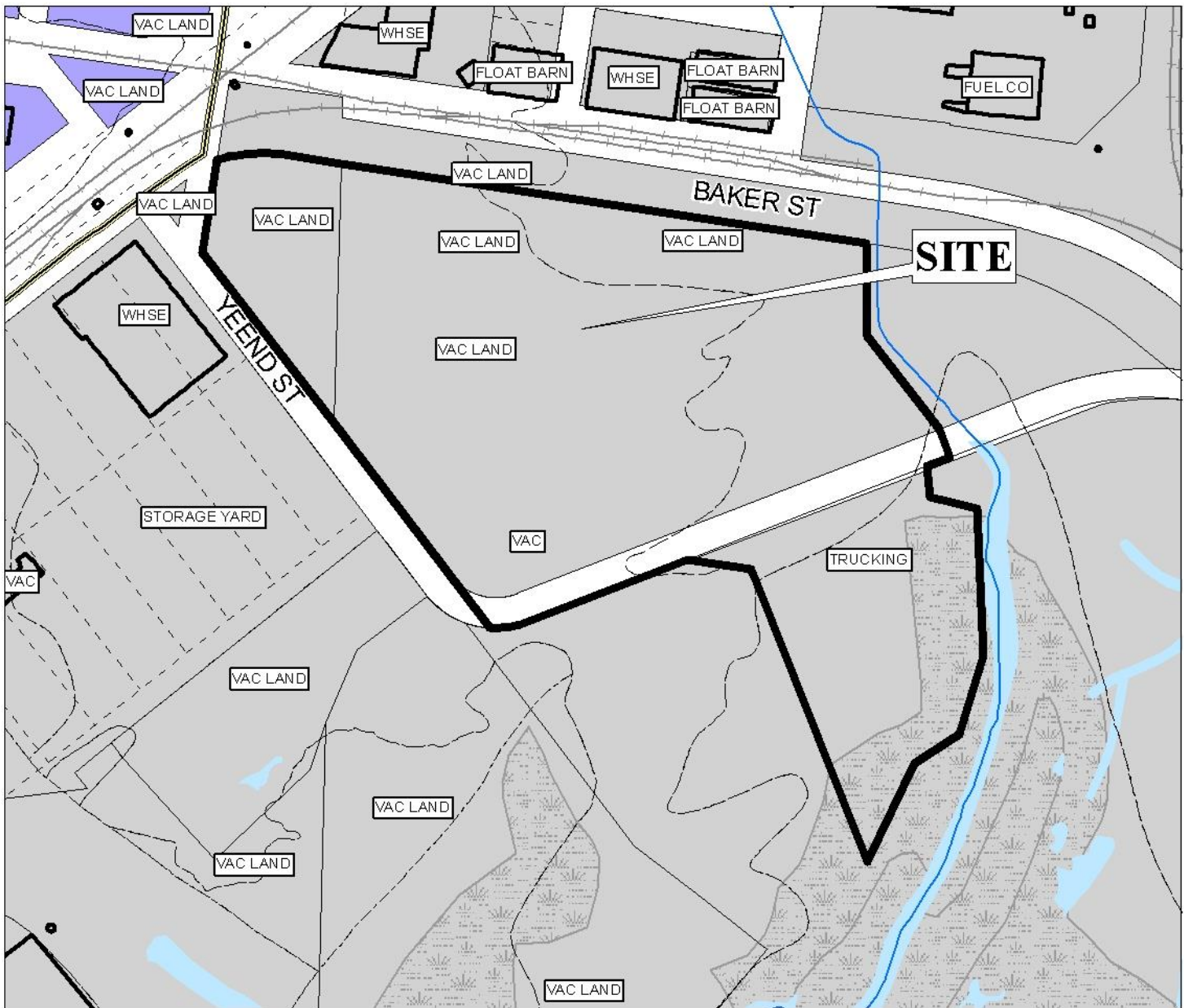
APPLICANT Merchants Alabama, LLC

REQUEST Front Yard Setback Variance



NTS

BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by vacant land and industrial use.

APPLICATION NUMBER 6330 DATE July 6, 2020

APPLICANT Merchants Alabama, LLC

REQUEST Front Yard Setback Variance

 R-A	 R-3	 T-B	 B-2	 B-5	 MUN	 SD-WH	 T5.1
 R-1	 R-B	 B-1	 B-3	 I-1	 OPEN	 T3	 T5.2
 R-2	 H-B	 LB-2	 B-4	 I-2	 SD	 T4	 T6



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING AERIAL



APPLICATION NUMBER 6330 DATE July 6, 2020

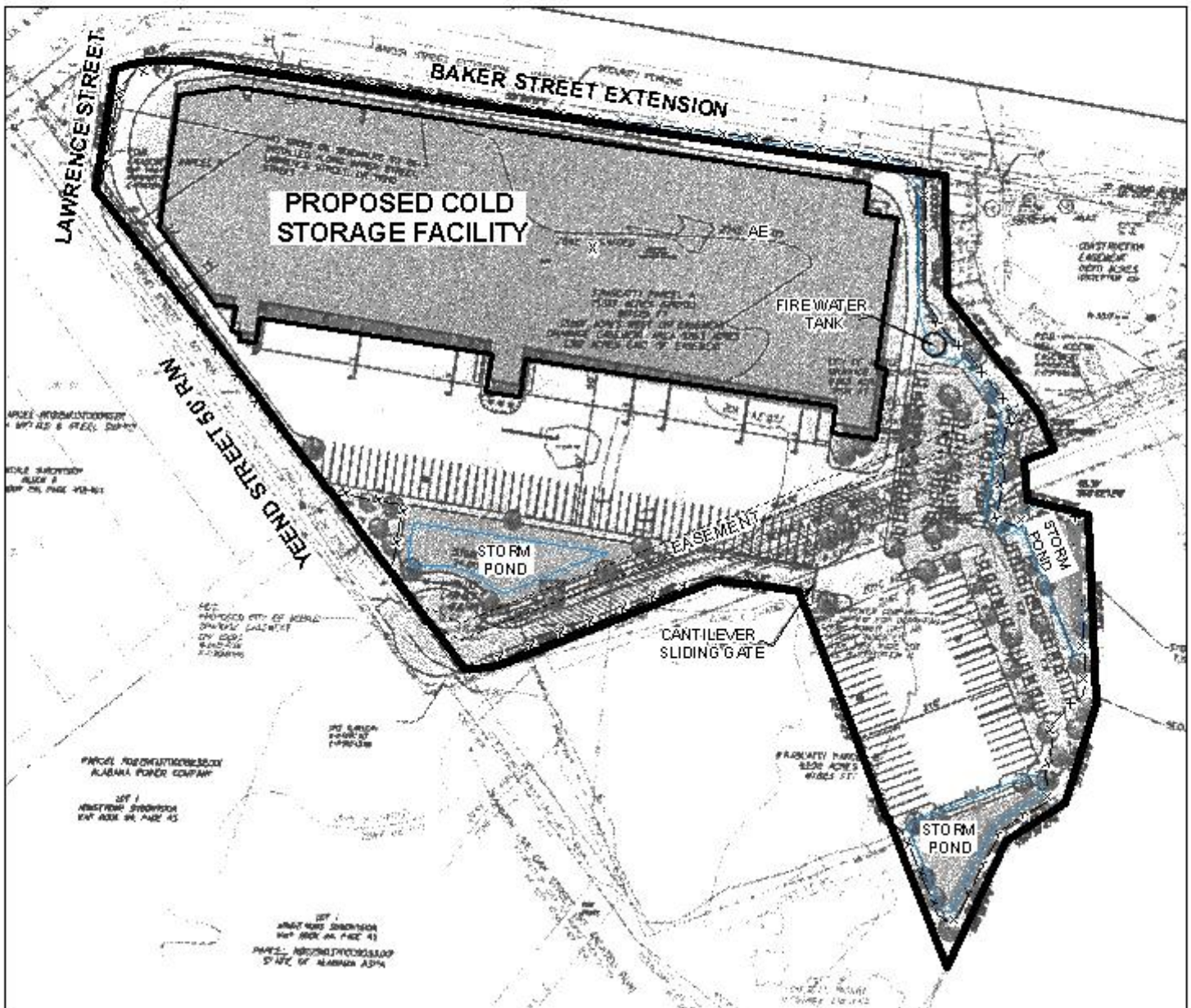
APPLICANT Merchants Alabama, LLC

REQUEST Front Yard Setback Variance



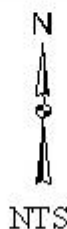
NTS

SITE PLAN

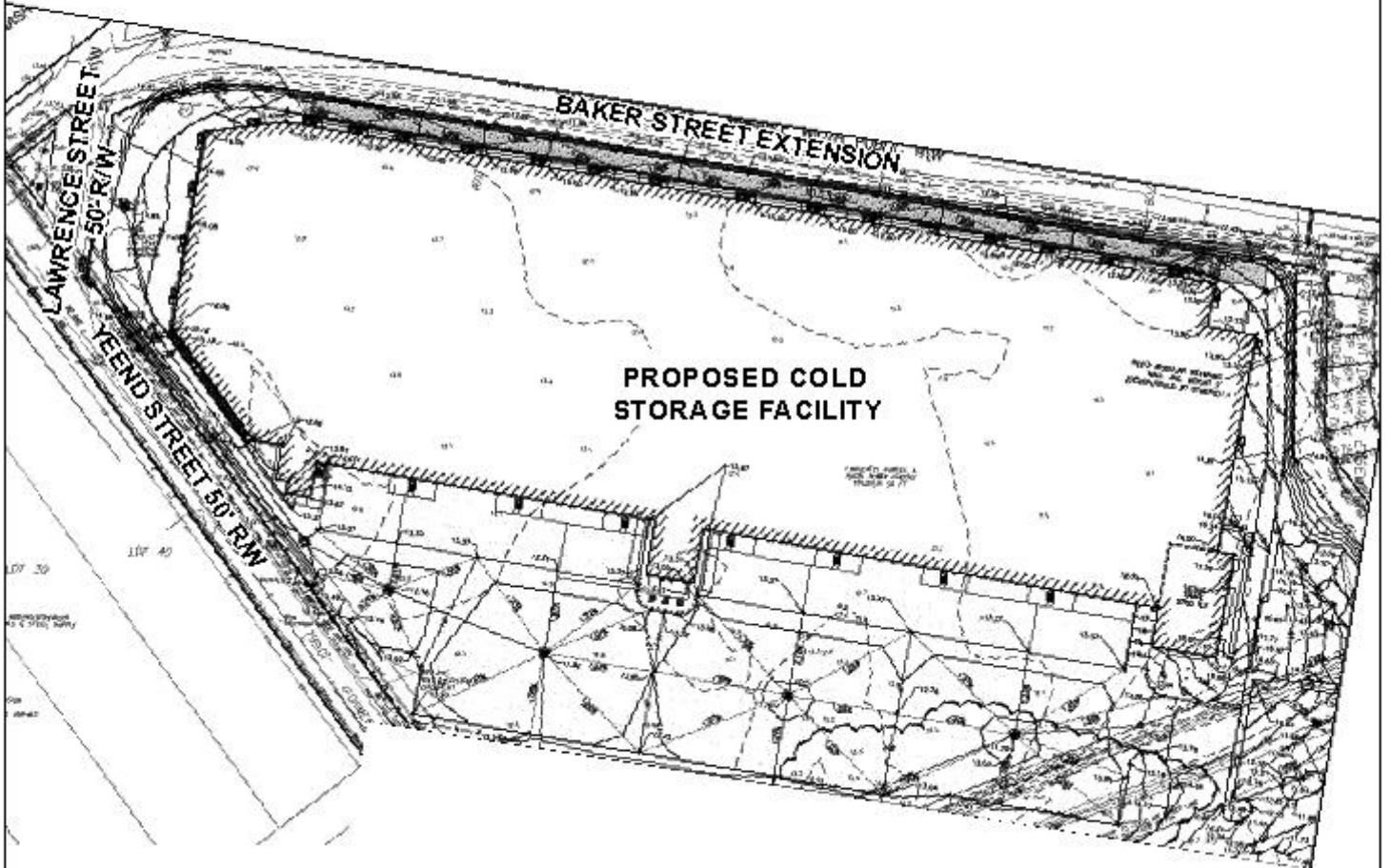


The site plan illustrates proposed building and existing easement, fence, and storm ponds.

APPLICATION NUMBER 6330 DATE July 6, 2020
 APPLICANT Merchants Alabama, LLC
 REQUEST Front Yard Setback Variance



DETAIL SITE PLAN



APPLICATION NUMBER 6330 DATE July 6, 2020

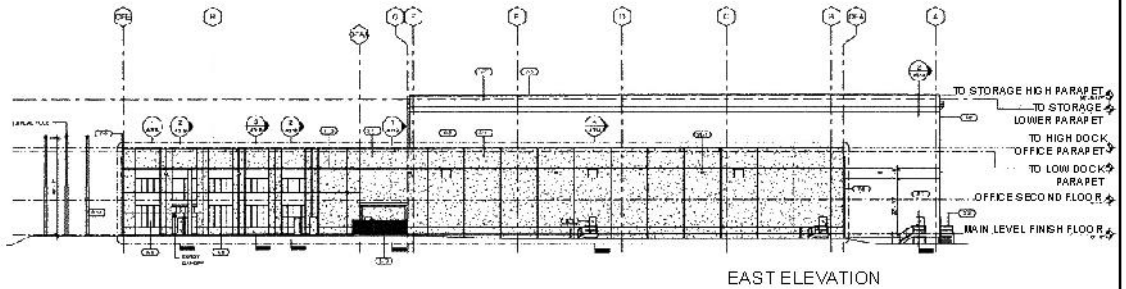
APPLICANT Merchants Alabama, LLC

REQUEST Front Yard Setback Variance

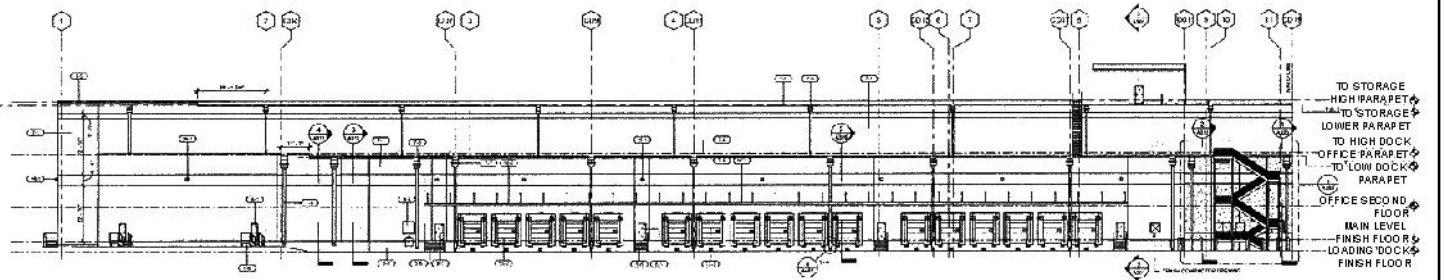


NTS

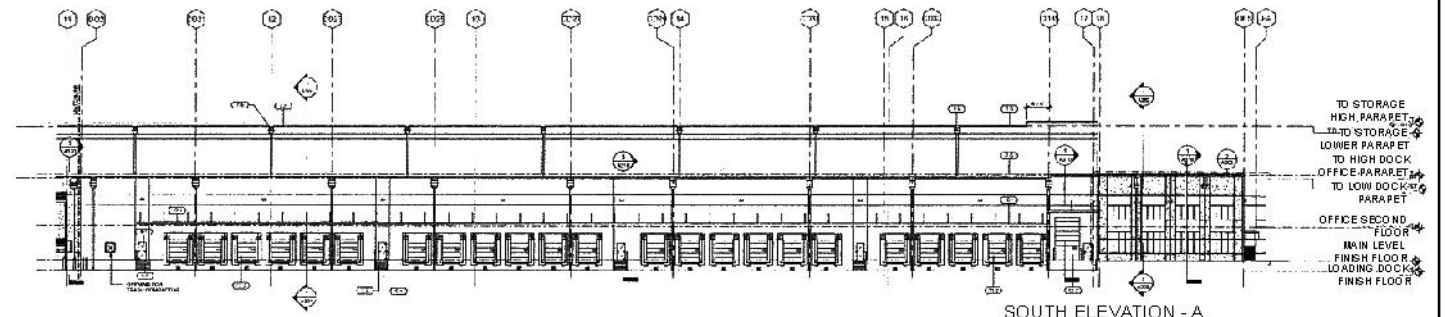
DETAIL SITE PLAN



EAST ELEVATION



SOUTH ELEVATION - B



SOUTH ELEVATION - A

APPLICATION NUMBER 6330 DATE July 6, 2020

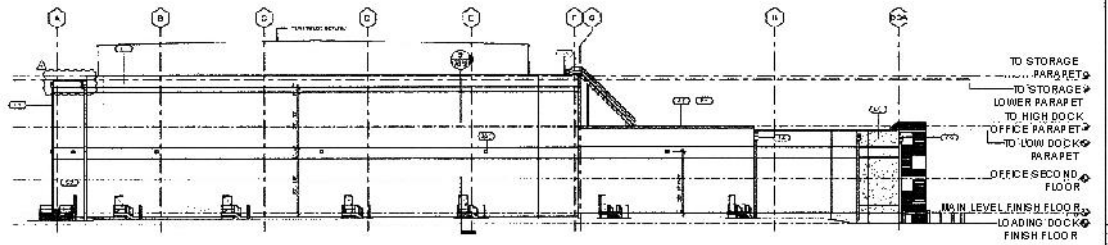
APPLICANT Merchants Alabama, LLC

REQUEST Front Yard Setback Variance

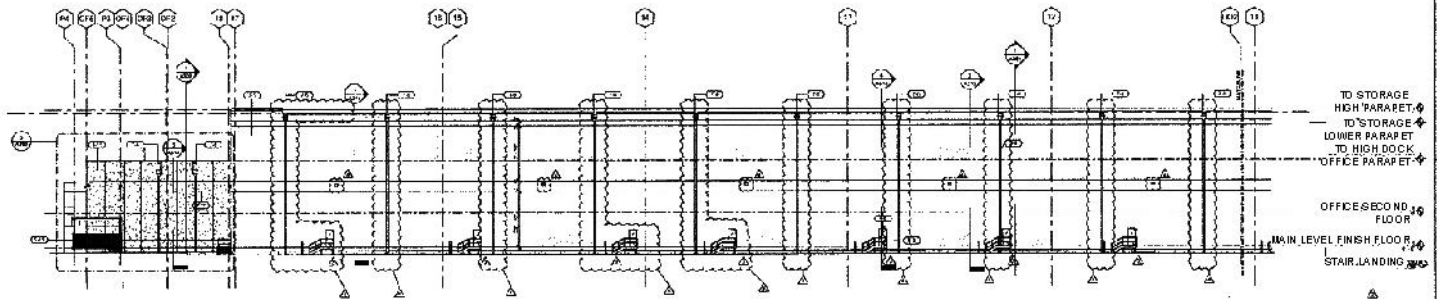


NTS

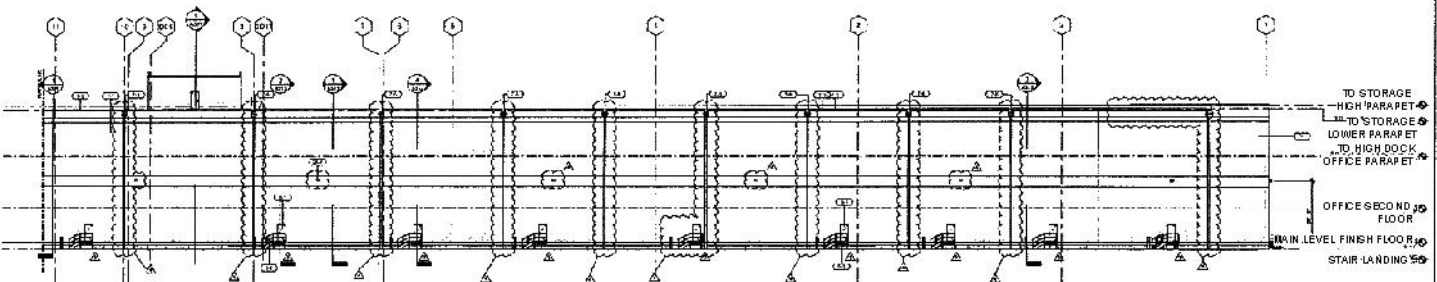
DETAIL SITE PLAN



WEST ELEVATION



NORTH ELEVATION - B



NORTH ELEVATION - A

APPLICATION NUMBER 6330 DATE July 6, 2020

APPLICANT Merchants Alabama, LLC

REQUEST Front Yard Setback Variance



NTS