

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, JULY 20, 2011
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, July 20, 2011 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5th Street.

Board Members Present: Scott Seiber, Justin Pounds, Mary Anne Medlock, Steven Reed, and John Krieb

Board Members Absent: Bill Whitaker and Brad Darnall

Also Present: Candace Dowdy, Peyton Mastera, Donnie Bunton, David Roberts, Reta Gray, Mike Pitman, Hawkins Teague, Chuck Foster, Sara Fineman, Sarah Hopgood, Gerri Lashley, Elwin W. Frasier, Bobby Deitz and public audience

Chairman Seiber called the meeting to order at 4:30 p.m. and welcomed all guests and applicants. Chairman Seiber asked if there were any changes, additions or deletions to the minutes from the June 22, 2011 regular meeting.

John Krieb made a motion to accept the minutes from the June 22, 2011 Board of Zoning Adjustments regular meeting as presented. Steven Reed seconded the motion and the motion carried unanimously.

Compatibility Hearing for Commercial Planned Development Project at 307 & 309 North 12th Street – Arby’s: Candace Dowdy used a Power Point presentation to show the property located at 307 and 309 North 12th Street where the applicant and owner of the property, Mr. Rajiv Johar, is proposing to construct an Arby’s Restaurant. Because this property is located in a B-4 zone the project will be reviewed as a conditional use and will go through a PDP since the proposed use will be a restaurant. This proposal was taken before the Planning Commission the previous night in an Advisory Meeting and now is before the BZA for a Compatibility Hearing. Ms. Dowdy stated that the Planning Commission chose to move forward with the project and they will be addressing the following issues:

- Stormwater detention
- Green space
- Signage
- Lighting plan
- Exterior of the building compatible with the surrounding area

Ms. Dowdy said that after the meeting had adjourned the previous night, there was discussion by the developer in having an access to connect the proposed Arby’s lot on the south side to Loretta Jobs’ shopping plaza on the north side. Ms. Dowdy showed a rendering of a typical new Arby’s. She stated that if the BZA deems that this project is compatible to the surrounding area then the Planning Staff will direct the applicant to move forward with submitting a PDP application and plat and set a date for a public hearing with the Planning Commission and BZA. Ms. Dowdy said that Attorney Chuck Foster was there to represent Mr. Johar.

John Krieb commented that according to the rendering that was presented there was a large amount of signage somewhat similar to the amount of signage that the BZA had previously voted down for the new Domino's. Ms. Dowdy said that the ordinance allows for one wall sign and one free standing sign and that a monument sign would have to be located at least ten feet from the property line. She stated that as the process progresses the signage regulations would be discussed with the owner. Mary Anne Medlock stated that there is a lot of foot traffic that goes through the area and she was concerned with pedestrian visibility at the site. Chairman Seiber said that there did not appear to be a lot of green space on the rendering. Donnie Bunton stated that the new rendering that was submitted at the Planning Commission meeting the previous night is for the actual size of the lot and that is 0.651 of an acre. It includes additional parking and possibly a little more green space than the previous drawings that were for a half acre lot. Ms. Medlock asked if there would be sufficient parking available. Ms. Dowdy said that the building would be approximately 2200 square feet and would only seat 42; therefore, based on that information, they would possibly exceed the parking requirements. Ms. Dowdy added that stormwater detention would also be addressed at a later time if the project does move forward.



Chairman Seiber asked Chuck Foster if there was anything that he would like to share.

Mr. Foster, former Mayor of the City of Murray, stated that he was actually serving on the Planning Commission when the sign ordinance was drafted several years earlier; therefore, the owners are very aware of the signage regulations and they will comply with the City Ordinance. Mr. Foster said that the exact location of the building will be adjusted on the lot to comply with all the setback requirements. At this time they are not exactly sure where the entrances or exits will be located. There are currently three entrances off 12th Street to the property and Mr. Foster

stated that they will probably only keep two of them. Mr. Foster said that they feel that they will be making an improvement over the existing green space. The two houses that are located at the site have not been occupied in a while and the landscaping needs much improvement. Mr. Foster stated that the rendering that Arby's has submitted is the 2010 design and they will put the signage on the building as required by the City Ordinance. They want their building to be compatible with Fidalgo Bay that is located to the north of their proposed site; however, if this particular rendering does not suit the board, they will be willing to look at other models. Mr. Foster added that Mr. Johar owns the Arby's in Central City, Kentucky along with several other businesses and he is attuned to making the area look nice. Mr. Foster said that they are showing 33 parking spaces on the site plan and they are calculating that they will only need 23 – 25 spaces. If a couple of the spaces are removed in order to adjoin the proposed project with Loretta Jobs' shopping plaza, they would still have ample parking. Chairman Seiber asked how important the access to the adjacent property would be. Mr. Foster stated that he thought it would be a convenience and that Ms. Jobs seemed receptive to the idea. He said they think the access may actually decrease any congestion that may exist on 12th Street and that they would be willing to go either way. Mr. Foster stated that they would also be opened to putting in an access to Fidalgo Bay. John Krieb said that if the access is put in this would open up a third entrance into the property which could create even more congestion. Mr. Foster said that Arby's sent their property department from Nashville and their construction group from Indianapolis to look at this site and they do not foresee a problem.

Sara Fineman, 202 North 13th Street, Murray was sworn in. Ms. Fineman is the owner of Fidalgo Bay. She stated that they tried to put something in their current location that would be pleasing to the neighborhood as well as a good fit for the surrounding area. She would like to see the BZA look at what the vision is for Murray and how to accomplish that goal. Ms. Fineman said that she is somewhat frustrated that she has to come to the meetings because she wants to make sure that a voice is heard. During the construction process of Fidalgo Bay, she was very concerned about leaving the big tree in the front of the building because green spaces are critically important to the health of a community. She added that sidewalks are also important and she hopes that the board will take that into consideration as they move forward.

John Krieb made a motion to allow Mr. Rajiv Johar to be able to file an application and a preliminary plat with the Planning Department to move forward with the Arby's project at 307 & 309 North 12th Street as it is deemed compatible with the surrounding area. Justin Pounds seconded the motion and the motion was approved with a 5-0 voice vote.

Public Hearing to review Conditional Use Permit Application to allow three non-related persons to occupy the premises at 514 South 13th Street – Bobby Hopgood: Ms. Dowdy used a Power Point presentation to show the property located at 514 South 13th Street (R-2 zoning district) that is owned by Bobby and Sarah Hopgood. The Hopgoods reside in Illinois and rent the house. Ms. Dowdy stated that Planning Staff received a complaint on June 7, 2011 indicating that the property was possibly being used for multi-family and at that time a letter was sent to Mr. and Mrs. Hopgood. Mr. Hopgood responded with a call to the Planning Department. Ms. Dowdy said that she explained to him that the property was located in a single

family zoning district and that it needed to be brought into compliance. The utility records indicate that from December 2010 to June 1, 2011 the property was rented to college students and on July 1, 2011 the property was leased to Shelby Stevens, a student at Murray State University. Mr. Hopgood had told Ms. Dowdy that they had signed a one year lease for one student to reside there and that he would investigate the situation. Ms. Dowdy went to the property to take pictures and while she was there one of the tenants came home. After talking to the girl, Ms. Dowdy discovered that there were in fact three girls living in the house. Ms. Dowdy said that she had called the police department to see if they had received any complaints regarding the property. The police reported that there had been only one call in April of this year and the nature of that call was concerning an unwanted subject at the property. The police office warned the trespasser to stay away from the property. Ms. Dowdy stated that the property owners would like to rent the house to a total of three girls attending Murray State University. She concluded that letters were sent to the adjoining property owners and she had not received any calls in reference to the letters that were sent out.

Chairman Seiber opened the public hearing and asked if there was anyone that wished to speak in favor of the application.

Sarah Hopgood, 4830 Red Oak Drive, Waterloo, Illinois was sworn in. Ms. Hopgood stated they had signed a lease with Shelby Stevens (who formerly lived in Cadiz) on June 30, 2011. Ms. Stevens is doing some job shadowing at the local hospital; therefore, she wished to reside in Murray. Ms. Hopgood stated that when they received the notice from Ms. Dowdy they immediately contacted Ms. Stevens. Ms. Stevens told her that there were two other girls living at the residence. Ms. Hopgood said that the two other girls moved out that evening and they understood that they would not be allowed to live in the house until after the board met. Chairman Seiber referred to the pictures that Ms. Dowdy had taken with one of the girl's automobiles being parked in the yard. He explained that these homes are single family and do not usually have adequate parking for multi-family situations. Tenants usually end up parking in the street or in the yard as seen in the pictures. He stated that typically this type of situation did not occur with only one tenant. Chairman Seiber asked if there were "No Parking" signs on the street. Ms. Hopgood said there were not. She added that she had lived there for four years prior to her move to Illinois and on several occasions she had seen cars parked on both sides of the street. Ms. Dowdy stated that she thought since there were no signs posted on the street, cars would be allowed to park there. David Roberts added that police would not typically write tickets unless there were "No Parking" signs posted.

Chairman Seiber asked if there was anyone that wished to speak in opposition of the application.

David Roberts, 315 South 13th Street, Murray was sworn in. Mr. Roberts reminded the board that in 2008 a similar request was denied at 201 South 13th Street. The house had been granted a Conditional Use Permit earlier with several conditions placed on it and at the time it was brought back before the board for review, it was denied. Mr. Roberts stated that he is not in favor of multi-family residing in a predominately single family residential area.

Sara Fineman came forward and stated that she is opposed to allowing an abundance of Conditional Use Permits. Ms. Fineman said that she wanted to go on the record to say that if there is zoning set up for single family; that is what it needs to be. Ms. Fineman resides on North 13th which is located a couple of blocks from the University and she sees this happening all the time in their neighborhood. She said that zoning is set up for a reason and if the zoning is wrong for that particular area, then it needs to be addressed. Ms. Fineman concluded that to continue setting up Conditional Use Permits is wrong.

Ms. Dowdy stated that Planning Staff has the right to review a Conditional Use Permit on an annual basis and they do their best to monitor each one. The board has the right to put any type of conditions on the permit as they see fit and they can also bring that item back before the board at any time to re-evaluate the situation if the applicant is found to be non-compliant. Ms. Dowdy added that the board also has the right to revoke a Conditional Use Permit.

Chairman Seiber asked if there was any rebuttal.

Ms. Hopgood came forward and stated that the reason that she originally bought the house in a residential area as a college student was because she had lived in a neighborhood surrounded by college kids and she was tired of that atmosphere and ready to get into a quieter spot. She is aware that the home is in a single family residential neighborhood; however, the houses on each side of her house are currently rented. (Ms. Medlock clarified that just because a house was in a single family residential area did not mean that it could not be rented; it simply meant that the house was for single family use.) Ms. Hopgood said that if they were granted a Conditional Use Permit, they would be in agreement to have the girls move out at the end of their one year lease. She stated that the three girls are each going into their third year of college with serious majors. The girls are holding down jobs in addition to being full time students and they are ready to get into a quiet neighborhood and focus on their school.

Chairman Seiber closed the public hearing and turned it over to the board for discussion.

Mary Anne Medlock made a motion to deny the request for a Conditional Use Permit at 514 South 13th Street to allow three non-related persons to occupy the premises in an R-2 (Single Family Residential) zoning district. Justin Pounds seconded the motion and the motion carried with a 5-0 voice vote.

Public Hearing to review Conditional Use Permit Application to allow three non-related persons to occupy the premises at 1702 Olive – Gerri Lashley: Candace Dowdy used a Power Point presentation to show the property at 1702 Olive which is owned by Gerri Lashley. Ms. Dowdy stated that while reviewing the Conditional Use Permit that was previously approved for the property on June 7, 2005 the Planning Staff noticed that the permit was only valid as long as Ms. Lashley's daughter was a student at Murray State. Since the permit was approved six years ago a letter was sent to Ms. Lashley asking her to contact the Planning Department to verify whether or not her daughter was still a student at Murray State. When Ms. Lashley replied she indicated that her daughter had graduated from MSU in her fifth year and that she no longer

lived in the house. Ms. Lashley stated that she did not remember that that was one of the conditions placed on the permit. She currently has the home rented to three college girls and wanted to know what she needed to do to bring the property into compliance. Ms. Dowdy explained that she would have to reapply for a new Conditional Use Permit. Ms. Lashley indicated that there have been no problems with the tenants as far as she knew and that she checks with her neighbors, contractors and mailman periodically to see if there are any issues that she should be aware of. Ms. Lashley also informed Ms. Dowdy of the improvements that she had made to the property since she has owned it. She indicated that the real estate market has not been the best in order to put the house on the market without losing her investment. She is requesting that the board consider allowing her to continue to rent to three college girls. Ms. Dowdy stated that she called the police to see if there had been any complaints regarding the property and there had been none. Ms. Dowdy concluded that letters had been sent to the adjoining property owners and no replies were received.

Chairman Seiber opened the public hearing and asked if there was anyone that wished to speak in favor of the application.

Gerri Lashley, 3950 Russell Boulevard, St. Louis, Missouri was sworn in. Ms. Lashley apologized for her oversight in not coming before the board sooner. She stated that since her daughter had graduated, the house had continuously been rented. She currently rents to three girls that are MSU students and she said that they have not given her any trouble. Each of the girls are employed this summer and enrolled in MSU for the upcoming year. Ms. Lashley sees these girls as being similar to her daughter in that they could not manage or study in a dorm environment. She added that several of her previous renters (including her daughter who has learning disabilities) had gone on to achieve successful careers and she attributes that to this type of living environment. Ms. Lashley has employed a gentleman that keeps the yard work maintained and a handy man that makes all necessary repairs. She said that the house is well kept and she thinks it is a good fit for the neighborhood. Ms. Lashley brought along a copy of her lease and stated that it is written in the lease that the students are not able to park along the street or on the grass. She added that she had personally spoken to the girls about parties at the site and encouraged them to be responsible and good neighbors. Ms. Lashley said that she also has spoken to the neighbors about the girls living there and no one voiced a complaint. This told her that the girls were in fact being responsible good neighbors as she had requested. Chairman Seiber asked when the girls would graduate and Ms. Lashley replied that she believed they would graduate in 2012 and 2013 and that each girl had signed a lease until May of 2012. Ms. Medlock asked Ms. Lashley if she would be opposed to leasing to a family. Ms. Lashley said that she currently has a bit of control by renting to students because she is personally paying the utilities for the house and for the grass to be cut; however, she feels that if a family moves in, she will not have that control. She would rather sell the house in that situation. Ms. Medlock stated that there are a lot of families that cannot afford to buy a home that would like to rent a nice home such as this in a desirable neighborhood. Ms. Lashley stated that the people across the street from her house own their home; they have children and their house is not kept as well as Ms. Lashley's is. Ms. Lashley thanked the board for previously granting her the Conditional Use Permit.

Elwin W. Frasier, 305 North 17th, Murray was sworn in. Mr. Frasier lives across the street from Ms. Lashley's house and he said that he would like to see that the girls continue to live in the house. Mr. Frasier has lived there for twelve years and there has never been any trouble from the tenants.

Chairman Seiber asked if there was anyone that would like to speak in opposition to the application.

Sara Fineman came forward and stated that once again she is opposed to Conditional Use Permits in residential areas.

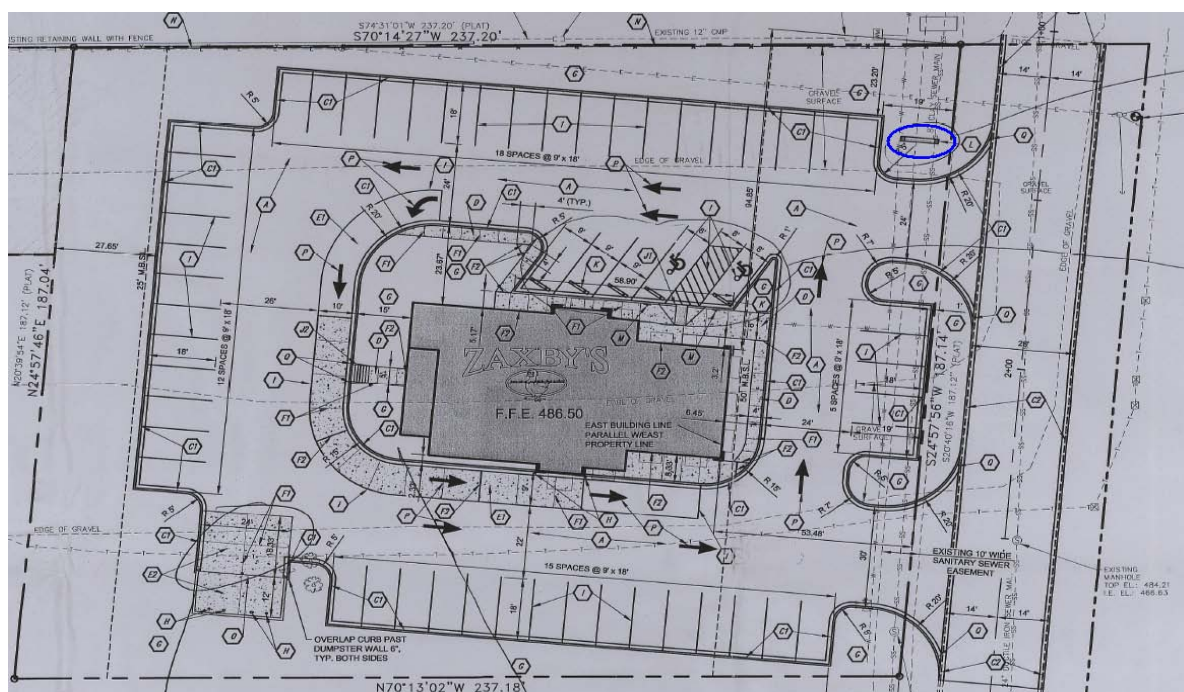
Chairman Seiber closed the public hearing and turned it over to the board for discussion.

Mr. Krieb stated that initially he felt sympathetic with Ms. Lashley and thought he would agree to extend the Conditional Use Permit; however, he realized that there is the probability that the girls will not graduate the same year and then the situation could go on and on. He said that he thinks they should follow consistency and say no. Justin Pounds said that he thought Ms. Lashley had done a fantastic job of keeping the house well maintained and he thinks a Conditional Use Permit will be great in this location because of its proximity to other multi-family zoned districts. He added that this would be a prime candidate for rezoning in the future. Chairman Seiber stated that he had lived in a place similar to this situation during his last two years of college and it was a wonderful experience. He suggested that they grant the extension of the Conditional Use Permit for a year to allow some of the girls to graduate and hopefully by that time see the market improve where Ms. Lashley could put the house on the market for sale. He thinks this is one of those conditions where the permit will work on a year to year basis and if it should stop working, end it. Ms. Medlock stated that she respectfully disagreed because there are multi-family zoning districts in the city for these situations. She added that she did not feel that they were doing the neighborhood a service by putting conditions on the permit to meet the need of the home owner. She thinks they need to stick to what the ordinance says and return the property to its proper zoning. Steven Reed stated that he would have to agree with Ms. Medlock. He said that the property looks great, but it seems like the home owner is asking for forgiveness instead of permission. He added that it is the property owner's responsibility to be aware that their Conditional Use Permit has expired. Mr. Reed said that if the property looks as good on the inside as it does on the outside and with such a desirable location in that neighborhood, he does not think Ms. Lashley will have a problem selling the property.

John Krieb made a motion to deny the request for a Conditional Use Permit at 1702 Olive Street to allow three non-related persons to occupy the premises in an R-2 (Single Family Residential) zoning district and to allow the current tenants to live there until the end of the fall semester at Murray State. Mary Anne Medlock seconded the motion and the motion carried with a 3-2 voice vote. Justin Pounds and Scott Seiber voted no. Steven Reed left the meeting at 6:00 p.m.

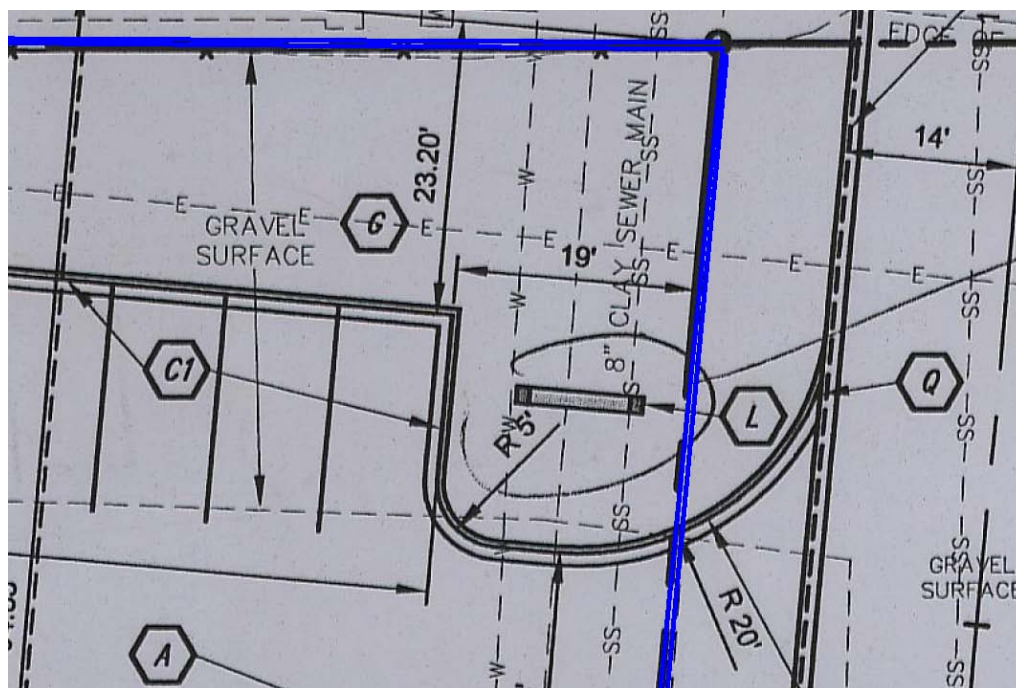
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Public Hearing to review Dimensional Variance request for a six foot front setback on monument sign – Zaxby’s: Ms. Dowdy used a Power Point presentation to show the property where the new Zaxby’s is located at 1209 North 12th Street. The applicants will be installing a monument style sign at their business and it will meet all size requirements. The sign will be 14 feet in height and approximately 63 square feet overall (allowed to be 14 feet in height and based upon road frontage 80 square feet in size). Ms. Dowdy stated that the applicant feels the proposed site is the only practical place to erect the sign because of the physical restraints with the property development. All other signage will be in compliance with the ordinance. Below you will see a site plan with the proposed location of the sign circled on the northeast portion of the property.



Four feet in front of the proposed sign is the front property line; thus, the applicants are requesting a six foot front setback variance on the placement of the monument style sign. The below picture clearly depicts the area for which they would like to place the sign and the physical challenges they face. Also noteworthy is that this sign will be located over top of an existing sewer and water line. Ms. Dowdy said that the applicants understand that they will be required to sign a waiver that states if the sign should have to be removed for improvements made to the sewer or water lines, they will be responsible for replacing the sign at their expense. Chairman Seiber asked if this location of the proposed sign would present a visibility problem. Ms. Dowdy stated that it would not. The setback is being requested from the frontage road and not directly off Hwy 641. Ms. Dowdy added that Bobby Deitz from Geo Tech was there to represent Zaxby’s.

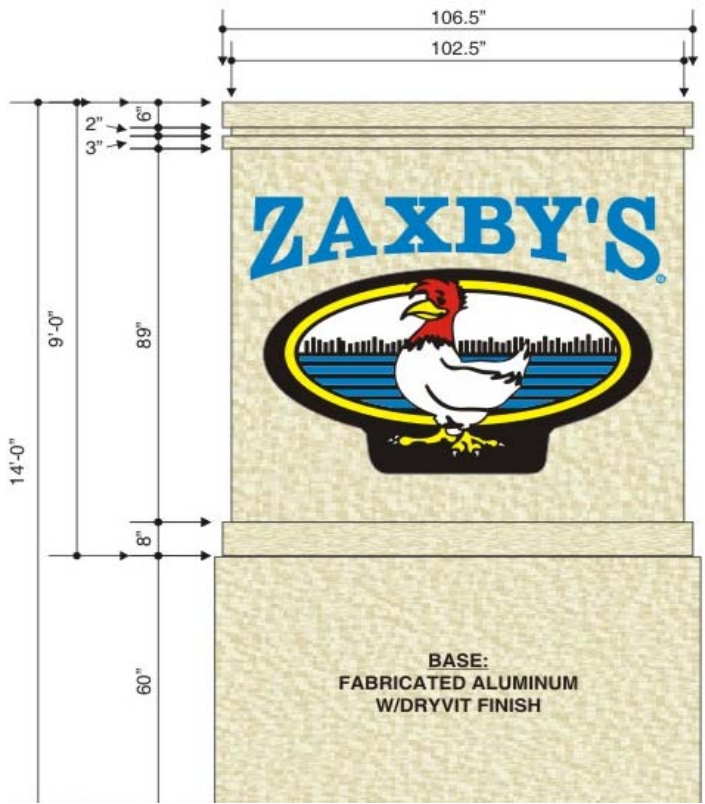
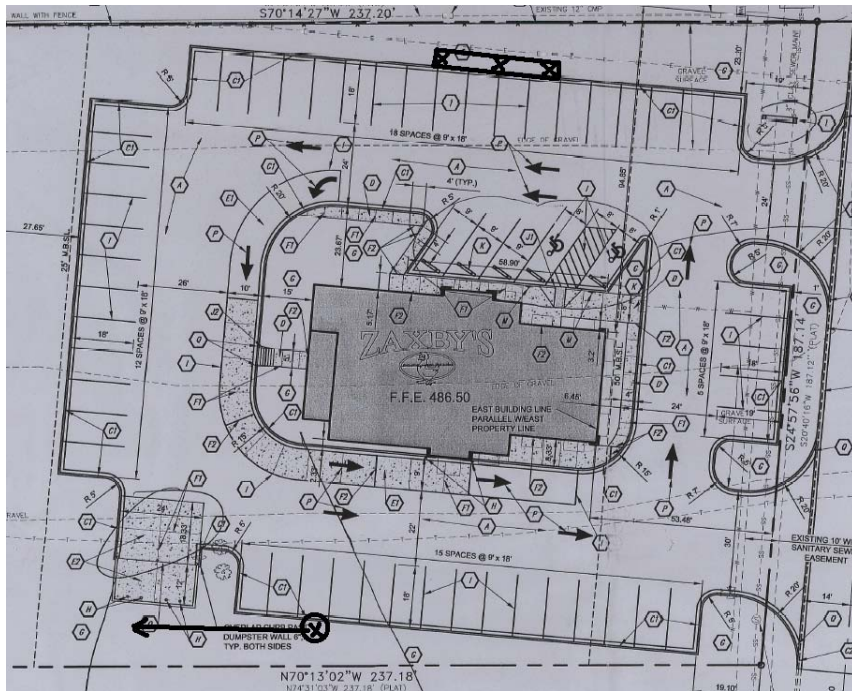
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Bobby Deitz, 645 Swift Road, Kirksey, Kentucky was sworn in. Mr. Deitz stated that he was there to answer questions from the board. Mr. Pounds asked if it was possible for someone to develop the property to the south of Zaxby's and if so, would there be any Flood Plain issues there. Mr. Deitz replied that there are Flood Plain issues to that property and if it were developed, there would be obstacles and the developer would have to obtain a permit through the Division of Water. Mr. Krieb asked if Zaxby's was within the Flood Plain and Mr. Deitz said that it was outside the Flood Plain.

Mr. Pounds asked if the city that had any issues with the sign being located on top of the utilities. David Roberts said that they do not have any issues with them constructing the sign at that location; however, they would like to see that the water line is not damaged in the process. Mr. Roberts added that the applicants will be made aware of their responsibilities (prior to construction) should repairs be necessary to the utilities at a future time.

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Justin Pounds made a motion to approve a six foot front setback variance on the placement of a monument style sign for Zaxby's at 1209 North 12th Street as placing the sign at this location is the only practical location due to physical constraints of the development;

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contingent upon the applicants signing a waiver that this sign is covering existing utilities and is thereby subject to removal if any improvements or repairs to said utilities are ever made; and, this sign will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. John Krieb seconded the motion and the motion carried with a 4-0 voice vote.

Questions and Comments: None

Adjournment: Justin Pounds made a motion to adjourn. John Krieb seconded the motion and the motion carried with a unanimous vote. *The meeting adjourned at 6:10 p.m.*

Chairman, Scott Seiber

Recording Secretary, Reta Gray