ORDINANCE NO. 5323

AN ORDINANCE OF THE CITY OF DENISON, TEXAS, PROVIDING FOR SPECIFIED CHANGES IN THE OFFICIAL ZONING MAP OF THE CITY OF DENISON, TEXAS; PROVIDING FOR A CONDITIONAL USE PERMIT FOR A RESTAURANT WITH DRIVE-THROUGH SERVICE IN THE NEIGHBORHOOD SERVICES DISTRICT ON THE PROPERTY DESCRIBED IN EXHIBIT A, BEING APPROXIMATELY 0.34444 ACRES, BEING LEGALLY DESCRIBED AS LOT 1 AND LOT 2, BLOCK 7, STEVENS ADDITION, GRAYSON COUNTY, TEXAS, AND COMMONLY KNOWN AS 604 W. MORTON STREET, CITY OF DENISON, GRAYSON COUNTY, TEXAS; PROVIDING A PENALTY CLAUSE; PROVIDING REPEALER, SEVERABILITY AND SAVINGS CLAUSES; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

WHEREAS, Janes White ("Owner") has made application under the provisions of the Zoning Ordinance of the City of Denison for a Conditional Use Permit for a Restaurant (With Drive-Through Service) as depicted by Site Plan in **Exhibit "B"**, on property being 0.3444± acres, being Lot 1 and Lot 2, Block 7, Stevens Addition, Grayson County, Texas, and commonly known as 604 W. Morton Street, Denison, Texas, and more specifically described and depicted in **Exhibit "A"**, copies of which are attached and incorporated as if fully set forth herein (the "Property"), which Property is located in the Neighborhood Services District; and

WHEREAS, the Comprehensive Zoning Ordinance of the City allows for a Restaurant (With Drive-Through Service) in the Neighborhood Services District with the grant of a Conditional Use Permit; and

WHEREAS, public hearings on said application having been held before the Planning and Zoning Commission and the City Council of the City of Denison (the "City Council"), after due notice of the public hearings having been mailed and published in all respects as required by law on the property fully described in the body of this Ordinance; and

WHEREAS, the Planning and Zoning Commission has recommended approval of a Restaurant (With Drive-Through Service) for the Property; and

WHEREAS, the City Council has considered the evidence and testimony provided by all parties appearing before the City Council, in person and in writing, and the recommendation of the Planning and Zoning Commission relative to the proposed zoning change and has further considered all written approvals and protests, all as required by law; and

WHEREAS, the City Council has determined that the uses requested for the Property as requested in the Conditional Use Permit application and subject to the provisions of this Ordinance are compatible with surrounding properties and are appropriate for the location of the Property.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DENISON, TEXAS:

Section 1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Zoning Map and Conditional Use Permit Approved. The zoning map of the City of Denison adopted by Section 28.3 of the Denison Code of Ordinances and on file in the office of the Planning Director is hereby amended to reflect the Conditional Use Permit is approved in the Neighborhood Services District on the Property as follows:

2.01. Permit Granted. A Conditional Use Permit ("CUP" or "Permit") for the Property authorizing use of the Restaurant (With Drive-Through Service), is hereby approved.

2.02. Permit Conditions. The CUP and the use for which it is granted is subject to all Applicable Regulations (defined below) and to the following conditions:

A. Uses. The following use shall be permitted in accordance with the conditions of the CUP:

Restaurant or Cafeteria (with drive-through service): An eating establishment where customers are primarily served at tables or are self-served, where food is consumed on the premises, and which may include a drive-through window(s).

B. Applicable Regulations. In additional to the specific requirements set forth in this Ordinance, this CUP shall be subject to all ordinances and regulations of the City applicable to the Property, including without limitation the Comprehensive Zoning Ordinance and those regulations governing the Neighborhood Services District ("Applicable Regulations"). The CUP granted by this Ordinance shall control in cases of conflict between this Ordinance and/or the Comprehensive Zoning Ordinance.

C. Construction of a sidewalk, subject to all ordinances and regulations of the City's Code of Ordinances, to connect to the existing sidewalk at the corner of W. Morton Street and N. Mirick Avenue, and to continue along the boundary of the Property adjacent to N. Mirick Avenue.

D. Landscaping of the Property that shall be installed and maintained in addition to landscaping shown on Site Plan in **Exhibit "B"**.

Section 3. Failure to Comply/Expiration/Transferable. All terms of this CUP shall be complied with prior to issuance of a certificate of occupancy. This CUP shall be declared null and void and of no force and effect and shall discontinue if or for any one or more of the following:

A. Any failure to comply with any term or condition of this Ordinance or the applicable regulations, as they exist or may be amended; or

B. Any improvements, the Property, uses or structures regulated by this CUP are enlarged, modified, structurally altered or otherwise significantly changed unless a separate conditional use permit or other required authorization is granted therefor; or

C. A building permit for the construction of any new structure for which a use is authorized hereunder has not been approved within one (1) year of the date of approval of this Ordinance; or

D. A certificate of occupancy for any existing structure for which a use authorized by this Ordinance is not applied for and issued within one hundred and eighty (180) days from the effective date of this Ordinance; or

E. A use for which this CUP is granted ceases to operate for a continuous period of one hundred eighty (180) calendar days; or

F. A structure for which this CUP is granted remains vacant for a continuous period of one hundred eighty (180) calendar days; or

G. This CUP was obtained by fraud or deception; or

H. As otherwise permitted by law, this Ordinance and/or the City's Zoning Ordinance, as they exist or may be amended, including without limitation the requirements of Section 28.9 "Nonconforming Uses and Structures".

Section 4. Savings/Repealing Clause. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

Section 5. Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Denison hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences clauses and phrases be declared unconstitutional or invalid.

Section 6. Penalty. Any person, firm, entity or corporation who violates any provision of this Ordinance or Denison's Zoning Ordinance Chapter 28, as they exist or may be amended, shall be deemed guilty of a misdemeanor, and upon conviction, therefore, shall be fined in a sum not exceeding Two Thousand and No/100 Dollars ($2,000.00). Each continuing day's violation shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Denison from filing suit to enjoin the violation. Denison retains all legal rights and remedies available to it pursuant to local, state, and federal law.

Section 7. <u>Publication and Effective Date</u>. This Ordinance shall become effective immediately upon its adoption and its publication as required by law.

AND IT IS SO ORDERED.

On motion by Council Member Hander, seconded by Council Member Thorne, the above and foregoing Ordinance was passed and approved by the following vote:

Ayes: Hander, Courtright, Thorne, Gott, Crawley and Thomas
Abstentions:
Nays:
Absent: Massey

At regular meeting November 6, 2023.

Janet Gott
JANET GOTT, Mayor

ATTEST:

Christine Wallentine
Christine Wallentine, City Clerk

CITY OF DENISON
Denison
TEXAS
TEXAS 1872

EXHIBIT "A"
Property Description and Depiction

Being approximately 0.34444 acres, legally described as Lot 1 and Lot 2, Block 7, Stevens Addition, and commonly known as 604 W. Morton Street, Denison, Grayson County, Texas.

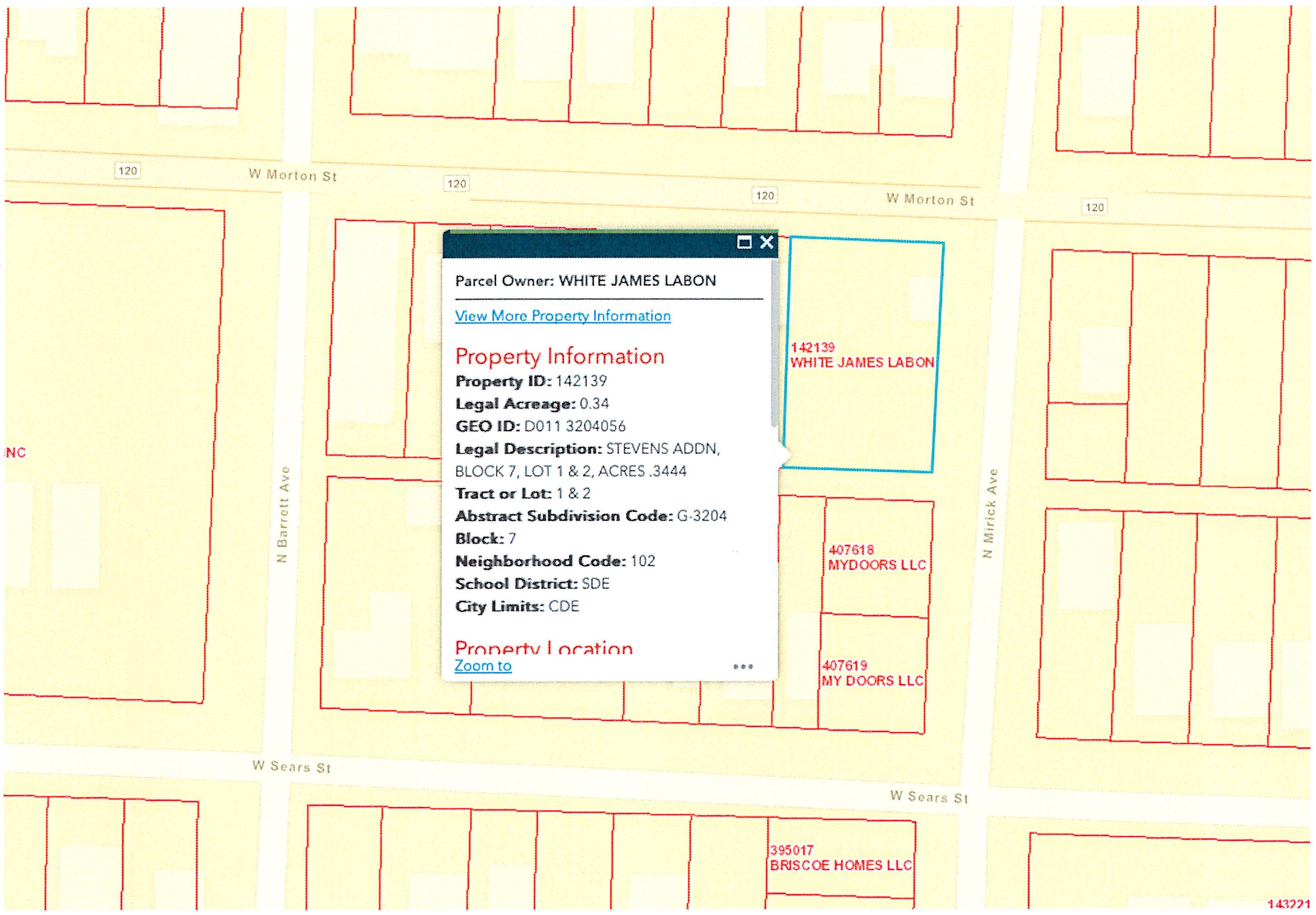
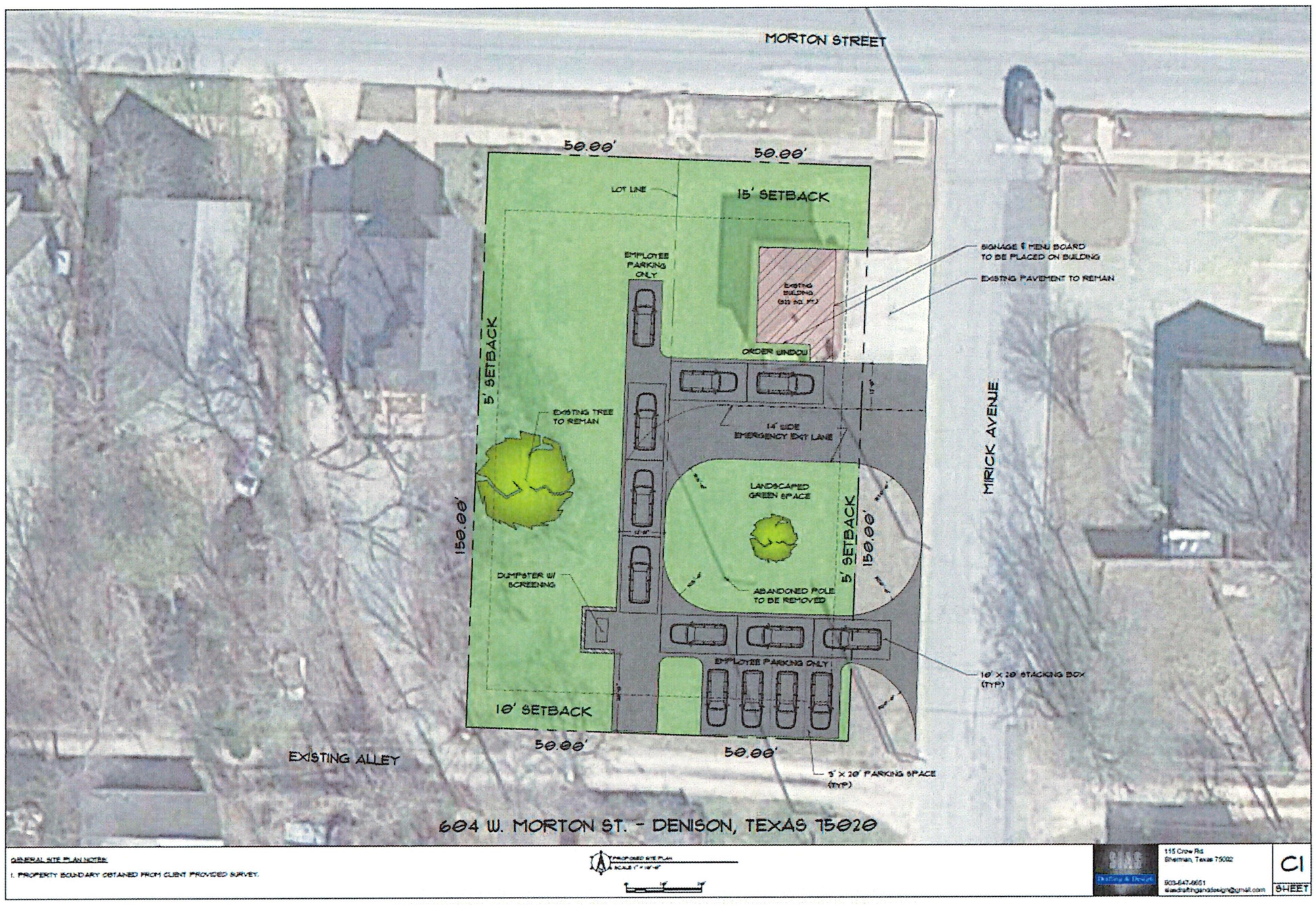
Exhibit "B"
Site Plan