

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, JULY 22, 2009
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, July 22, 2009 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5th Street.

Board Members Present: Kim Griffo, Mary Anne Medlock, Justin Pounds, Scott Seiber, Kevin Perry, Tom Auer and Bill Whitaker

Board Members Absent: None

Also Present: Candace Dowdy, Peyton Mastera, Mike Pitman, David Roberts, Reta Gray, Mayor Rushing, Matt Mattingly, John Gray, Scott Waldrop, Linda Grey Houck, Matt Gingles, Mark Roberts, Officer Steve Robinson and public audience

Chairman Whitaker called the meeting to order at 4:30 p.m. and welcomed all guests and applicants. Chairman Whitaker asked for approval of the minutes from the June 17, 2009 regular meeting.

Candace Dowdy noted a correction to the June 17, 2009 minutes regarding a statement that Attorney Mike Pitman made in reference to the Gray's Flea Market application. The statement: There is the condition on the permit that states his merchandise must be "aesthetically pleasing" should be changed to read: the manner in which merchandise is kept should be aesthetically pleasing.

Scott Seiber made a motion to approve the minutes from the June 17, 2009 regular Board of Zoning Adjustments meeting as corrected. Kim Griffo seconded the motion and the motion carried unanimously with a voice vote.

Scott Seiber made a motion to remove the review of conditional use permit at 609 South 4th Street for Gray's Flea Market from the table. Justin Pounds seconded the motion and the motion carried unanimously with a voice vote.

Review of conditional use permit – 609 South 4th Street – Gray's Flea Market: Chairman Whitaker recused himself. Vice Chairman Kim Griffo resumed the chair person position.

Attorney Mike Pitman stated that at the May 20th meeting the conditional use permit for Gray's Flea Market was reviewed and an amendment was added to the conditional use permit stating that Mr. John Gray keep his merchandise in an aesthetically pleasing manner at the rear of the building. Mr. Pitman said that in all fairness to Mr. Gray, an amendment should not be added during the review of a conditional use permit. According to Planning Staff, Mr. Gray has brought his business into compliance.

Scott Seiber made a motion to amend the tabled portion of the minutes from the May 20, 2009 regular meeting regarding Gray's Flea Market, 609 S. 4th Street, so that the requirement of placing all outdoor merchandise behind the rear building line is removed and to reaffirm the approval of the conditional use. Kevin Perry seconded the motion and the motion carried with a 5-1 vote. Kim Griffio voted no. Chairman Whitaker returned to the meeting. Mayor Rushing left the meeting at 4:55 p.m. Matt Mattingly left the meeting at 5:00 p.m.

Public hearing to review the conditional use permit application for an owner to reside on the premises of a permitted business in a B-4 zoning district – 201 N. 12th Street – Scott and Seth Waldrop: Candace Dowdy used a Power Point presentation to show the property at 201 North 12th Street. Ms. Dowdy stated that Scott and Seth Waldrop are considering purchasing the property pending approval of a conditional use permit to allow Seth to reside on the premises. They are proposing to open an advertising business (Tanager Productions) at this location; this is a permitted use in a B-4 zoning district. The house has previously been used as rental property. Scott Waldrop's son, Seth is a student at Murray State University and is also an employee of the business. Ms. Dowdy stated Mr. Waldrop is not planning to make changes to the structure of the building; however, he is going to be cleaning up the outside, adding new landscaping, and parking. A building permit will be required since the building will be changing from residential use to commercial use. Ms. Dowdy added that the City Building Official and Fire Marshal have each approved the building for the proposed use. The zoning ordinance states that the BZA may allow a conditional use permit for one dwelling unit for owners, operators or employees of a permitted use provided that such dwelling unit is a part of the building and located above or to the rear of such permitted use. Ms. Dowdy stated that the Planning Staff had reviewed what would be required for parking and based on the square footage of the home, Mr. Waldrop is required to provide five parking spaces on the premises and a tentative site plan for the additional parking spaces has already been provided. The plan shows a 10 foot wide driveway access on the 12th Street side of the property that will circle around to the four parking spaces in the rear. There will be one handicap parking space that meets ADA requirements on the Olive Street side that will make a total of five spaces. Ms. Dowdy noted that Mr. Waldrop was informed that the parking area would need to be in a properly bound surface so as to be durable and dustless and that he would have up to one year from date of parking lot construction to complete the bound surface.

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

Scott Waldrop, 178 P.B. Cloud Lane, Calvert City was sworn in. Mr. Waldrop stated that he is looking at purchasing the property pending the outcome of the application approval. Mr. Waldrop stated that the proposed business is an advertising type business where digital signage (consisting of television screens, content and advertisement) is installed. Their purpose is to sell the advertising on the screens. Mr. Waldrop said that he is intending on paving all of the parking areas. Mr. Waldrop added that the business could possibly employ a couple of part time MSU

students as well as himself and his son and the reason that he had chosen that particular location for a business was the proximity to the MSU campus.

Linda Grey Houck, 800 Sycamore Street, Murray was sworn in. Ms. Houck stated that she owned the business to the south of the proposed business and she was in favor of a new business going into the location and is looking forward to seeing the premises attractive again.

Chairman Whitaker asked if there was anyone that wished to speak in opposition to the application. There was no one. Chairman Whitaker closed the public hearing and turned it over to the board for discussion.

Kim Griffo made a motion to approve the conditional use permit to allow Seth Waldrop to reside on the premises at 201 N. 12th Street as an employee of Tanager Productions contingent upon parking requirements being met and that the property is in compliance with fire and building codes. Scott Seiber seconded the motion and the motion carried with a 7-0 voice vote.

Public hearing to review the dimensional variance application for an eight parking space variance – 214 North 15th Street – Ralph Gingles: Peyton Mastera used a Power Point presentation to show the property at 214 North 15th Street (previously occupied by The Frap House) where Mr. Ralph Gingles is proposing to open a Mexican carryout/fast food restaurant. According to Mr. Gingles' site plan, he will provide seating for 26 customers. The occupancy load per the Fire Marshal for this building is 60. Parking requirements for restaurants is one for each three persons within the seating capacity of the establishment, or one for each 100 square feet of gross floor area, whichever is greater (total of nine spaces), plus two spaces for each three employees (total of 4 parking spaces). Mr. Mastera stated that Mr. Gingles would be required a total of thirteen parking spaces and currently the number of off-street parking spaces at this location is five; thus, an eight (60%) parking space variance is being requested. Mr. Mastera added that according to the Fire Marshal, the business will be required to provide another means of ingress/egress with a fire rated door located on the backside of the building. In addition, a fire rated wall between the business and Dinh's Vietnamese Eggrolls is required; therefore, Ms. Dowdy stated that Mr. Gingles would be required to get a building permit for this location.

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

Matt Gingles, 291 Butterworth Road, Murray was sworn in. Mr. Gingles is the son of Ralph Gingles. Mr. Gingles stated that other restaurants had previously occupied the building he is looking at for his business and the parking situations had worked for them. He added that approximately 75% of their business is anticipated to be walk in traffic from MSU students; therefore, not as much parking will be required. Mr. Gingles said that he had talked to Gloria Shull (a previous occupant) and they had confirmed that the majority of their business had been walk in from the school. Mr. Dinh's business has moved from an adjoining building; thus, freeing up parking spaces that were allotted to his business and Mr. Dinh has agreed to let Mr.

Gingles use the extra space for parking if the need arises. Mr. Gingles added that there is a space available in the rear (that was previously used as a playground area by the daycare facility that it no longer located there) that can be reworked for employee parking. Mr. Gingles stated that the Fire Marshal had been there and gone over the changes that needed to be made to bring the building up to code such as the fire rated door and the fire dampening system in the vents to separate the two buildings.

Chairman Whitaker asked if there was anyone that wished to speak in opposition to the application. There was no one. Chairman Whitaker closed the public hearing and turned it over to the board for discussion.

Tom Auer made a motion to grant an eight parking space variance for Ralph Gingles at 214 N. 15th Street (property owner: Tung Dinh) for a proposed restaurant as the majority of the patrons will be of walk up nature from Murray State campus; this parking variance will only apply to this restaurant or any restaurant at this location with approximately the same seating capacity and deemed appropriate by Planning Staff; any expansion of the proposed restaurant will require review by the Murray Board of Zoning Adjustments. The parking lot is to be restriped for maximum use of parking area. The granting of this variance, 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 and the business will meet all fire and building codes. Kim Griffo seconded the motion and the motion carried with a 7-0 voice vote.

Public hearing to review the dimensional variance application for a 21 parking space variance – 102 North 15th Street – Mark Roberts: Candace Dowdy used a Power Point presentation to show the property at 102 North 15th Street where Mark Roberts is proposing to lease the lower level of the building (previously Zax's) to open an Asian restaurant. The building has three residential apartments on the upper level and is located in a B-1 zoning district. According to Mr. Roberts' site plan the gross floor area for the restaurant will be 3875 square feet and the seating will be for 100 people. Since they are looking at changing the use of the building from mercantile to assembly, the building codes will be different. There will have to be a fire rated separation in the ceiling area and the supporting structure between the residential use and the restaurant. The parking has been sufficient for the current use, but will change with the addition of a restaurant. With a seating capacity of this size, the building code requires the site plan and any drawings to be prepared and stamped by an architect and engineer. Based on the information provided, the *gross floor area* parking requirements exceed that of the *seating capacity* requirements. The parking requirements are 39 spaces for the restaurant with an additional four spaces for employees plus eight more spaces for the residents who live on the top floor for a total of 51 spaces needed. According to the site plan submitted by Mr. Roberts, only 30 off-street parking spaces can be provided; thus, a 21 parking space (41%) variance is being requested. Ms. Dowdy stated that she had spoken with Don Rogers, with the Sanitation Department, and that he had indicated that Mr. Roberts would have to situate his dumpster area to accommodate the new front load trucks so he could possibly lose an additional parking space

or two if the dumpster area could not be accessed from the rear of the building. Ms. Dowdy stated that when the building use changes to a restaurant, a four yard dumpster will be required for the restaurant and an additional four yard dumpster will be required for the tenants. Scott Seiber asked if changing the parking configuration by angling the parking spaces would free up more parking spaces for the proposed business.

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

Mark Roberts, 1106 Main Street, Murray was sworn in. Mr. Roberts stated that he had just been informed of the sanitation issue before the meeting started. Mr. Roberts said that the concreted area directly behind the building was approximately 30 feet by 80 feet and that it would be a preferred location for both dumpsters; however, he had concerns with the sanitation trucks being able to maneuver in and out of the tight area. Mr. Roberts added that he thought the parking spaces could be angled and that would free up one parking space on the end. This would allow a 12 foot opening where the sanitation trucks could enter; thus, Mr. Roberts would need a 22 parking space variance instead of the 21 spaces he was originally asking for. Mr. Roberts presented a letter that he had received from Hugh Massey, owner of Massey BP. *The letter was entered as Exhibit A.* The letter stated that Mr. Massey gives his permission for Mr. Roberts and his employees to use the BP parking lot for their employee parking. This would ease the parking problem by four or five spots. Mr. Roberts anticipates the majority of his business during the day to be generated by MSU affiliates; therefore, they would be walk-up customers and not as many parking spaces would be needed. He added that at night, MSU classes are at a minimum; thus, parking should be available along 15th Street.

Ms. Dowdy stated that she had previously spoken to Public Safety at MSU and they would not give any assurance that the parking spaces would be available for use along 15th Street nor would they profess to having open parking after hours. Ms. Dowdy presented a list of restaurants in Murray that have the same seating capacity that Mr. Roberts is requesting and she stated that the Planning Department has not had any other requests for parking space variances. Each business provided enough parking to meet the requirements with the exception of Vitello's Restaurant which only has 11 parking spaces. Ms. Dowdy stated that a restaurant has been at this location for many years and therefore their parking situation has been grandfathered in.

Justin Pounds suggested that Mr. Roberts ask for a 23 parking space variance as a comfort zone to make sure the sanitation department was able to make their pickup with no problems.

Chairman Whitaker asked if there was anyone that wished to speak in opposition to the application. There was no one. Chairman Whitaker closed the public hearing and turned it over to the board for discussion.

Justin Pounds made a motion to grant a 23 parking space variance for Mark Roberts at 102 N. 15th Street (property owner: Mike Holton) for a proposed restaurant with a seating capacity of 100. This variance is based on the fact that some of the patrons will be of walk

up nature from Murray State campus; this parking variance is to only apply to this restaurant or any restaurant at this location with approximately the same seating capacity and deemed appropriate by Planning Staff; any expansion of the proposed restaurant will require review by the Murray Board of Zoning Adjustments; 8 parking spaces must be specifically designated for the tenants of the apartments with the parking lot to be restriped for maximum use of the area; and by granting this variance, it 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 and that Mr. Roberts' employees will be allowed to use the parking at Hugh Massey's BP as long as Mr. Massey owns the property and remains in compliance. Kim Griffo seconded the motion and the motion carried with a 7-0 voice vote.

Questions and comments: Ms. Dowdy added that Mr. Howard Koenen had submitted his resignation from the Planning Commission effective July 22nd. He served for 31 years.

Scott Seiber made a motion to adjourn. Kim Griffo seconded the motion and the motion carried with a unanimous vote. The meeting adjourned at 6:25 p.m.

Chairman, Bill Whitaker

Recording Secretary, Reta Gray