

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, MAY 19, 2010
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, May 19, 2010 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5th Street.

Board Members Present: Justin Pounds, Mary Anne Medlock, Steven Reed, John Krieb and Bill Whitaker

Board Members Absent: Scott Seiber and Tom Auer

Also Present: Candace Dowdy, Peyton Mastera, Mike Pitman, David Roberts, Reta Gray, Reda Adams, Stephen Markle, Jeff Delaney, Davin Gambill, Rob McGloan and public audience

Chairman Whitaker called the meeting to order at 4:30 p.m. and welcomed all guests and applicants. Candace Dowdy swore in new member John Krieb. Chairman Whitaker asked for approval of the minutes from the March 17, 2010 regular meeting.

Justin Pounds made a motion to approve the minutes from the March 17, 2010 regular Board of Zoning Adjustments meeting as presented. Mary Anne Medlock seconded the motion and the motion carried unanimously with a voice vote.

Public hearing to review the dimensional variance application for a six foot rear setback variance on the placement of a principle structure – 801 Guthrie Drive – Reda Adams: Candace Dowdy used a Power Point presentation to show the home of Ms. Reda Adams located at the corner of Fairlane and Guthrie. Ms. Adams received a building permit on November 26, 1991 to construct the house at 801 Guthrie Drive. The site plan showed that the house would be 30 feet off the rear property line; however, the site plan did not show the brick deck that was constructed on the back of the house. The deck extends 11 feet beyond the back wall of the house toward the rear property line making the rear setback 19 feet. Ms. Adams is proposing to have the brick patio covered with a roof. Since the roof will be attached to the structure, it will be considered part of the home and she will not meet the 25 rear setback in an R-2 zone; thus, she is requesting a six foot rear setback variance. Ms. Dowdy stated that all adjoining property owners had been notified. Ms. Adams has contacted her neighbor behind her, Mr. Jeff Ballard, and he has no objections to her being closer than twenty-five feet to the property line. Ms. Dowdy stated that Mr. Ballard had called the planning department and expressed his support for Ms. Adams receiving the variance.

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

Reda Adams, 801 Guthrie Drive, Murray was sworn in. Chairman Whitaker asked Ms. Adams if she knew where her property line was. Ms. Adams said that she had the property surveyed before she built and the way she always has identified the property line was by a neighbor's

birdhouse. She stated that the birdhouse was gone now and that she believed the line was three feet from where the birdhouse used to be. Ms. Adams said that she had previously enjoyed sitting out on her deck and because of recent health issues she has decided to put a gabled roof over the deck to prevent her from being exposed to the sun. The roof will have posts holding it up and there will be railing around the deck. Both the posts and railing will be painted white to compliment the home.

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.

Mary Anne Medlock made a motion to approve a six foot rear setback variance on a proposed addition for Reda Adams at 801 Guthrie Drive based on the fact the existing deck has been there since the house was built in 1991 and that the addition is not expanding beyond the original square footage of the deck. This addition 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. The property owner behind Ms. Adams had no problem with her request. Justin Pounds seconded the motion and the motion carried with a 5-0 voice vote.

Public hearing to review the dimensional variance application for a ten foot side setback variance on the placement of a monument style sign – 1405 North 12th Street – Aaron’s: Peyton Mastera used a Power Point presentation to show the location of the proposed monument style sign for Aaron’s located at 1405 N. 12th Street. The proposed sign will be 12 feet in height and 49.5 square feet and will meet all size requirements. Currently there is an existing sign at this location that is a 96 square feet wooden billboard type sign which received a variance to be placed at its current location in October 1995. The applicant has agreed to remove this sign as part of the Dimensional Variance application. Mr. Mastera stated that the existing billboard is closer to the front property line than the required ten feet. It is also situated directly on the southern property line. The new sign will be going in the approximate location of the existing billboard; however, it will meet the front setback requirement. Since the proposed sign will only be six inches from the south side property line, the applicant is requesting a ten foot side setback variance. Aaron’s is requesting to place the new sign at this particular location instead of 10 feet from the side property line to avoid the sign being situated within the property access and possibly eliminating some of the parking. Mr. Mastera added that the property owner to the south had actually looked at the proposed site for the signage and he didn’t have any problem with the location.

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

Stephen Markle, 1405 North 12th, Murray was sworn in. Chairman Whitaker asked Mr. Markle to comment about the truck traffic to the business. Mr. Markle stated that they had a 53 foot

semi-truck that delivers to the loading dock on the south side of the building at least once a week and that they also had a smaller panel truck that they used for deliveries. Mr. Markle added that the sign would be located approximately six inches from the lot line to the south in order to keep the sign tucked away from the traffic that is coming and going thru the access.

Stephen Reed asked where the landscaping would go if the sign was located only six inches from the property line. Mr. Mastera stated that he would be working with Mr. Markle on that and the six inches may actually change to two or three feet off the property line to accommodate for the landscaping requirements.

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

Justin Pounds made a motion to approve a ten foot side setback variance on the placement of a monument style sign for Aaron's at 1405 North 12th Street as placing the sign at this location will keep clear the existing access thereby maximizing parking; and the variance is contingent upon the billboard sign being removed; 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 5-0 voice vote.

Public hearing to review the conditional use permit application for outdoor storage of merchandise – 500 South 4th Street - Myer's Lumber: Candace Dowdy used a Power Point presentation to show Myer's Lumber located at 500 South 4th Street. Ms. Dowdy stated that the property is located in a B-2 (Highway Business) zoning district. Myer's is looking to expand their business by selling metal carports and portable storage buildings. Planning staff explained to Myer's Lumber that they would need to apply for a conditional use permit to display these products outside. Mr. Jeff Delaney with Myer's Lumber indicated that they would like to display two different styles of the metal carport and one small metal building on their property located to the south of the old Morris Refrigeration building in a 60 foot x 74 foot open area that is outside the fenced area. The display of these products would be situated so that it would not obstruct the visibility of trucks entering or exiting the property. Customer parking is directly in front of the office building and employee parking is located along the north side of the building. Currently lumber is being stored in the storage buildings inside the fenced areas.

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

Jeff Delaney, 500 South 4th Street, Murray was sworn in. Mr. Delaney explained that Myer's Lumber would actually be displaying the buildings and carports and taking the deposit and then another company would be making the deliveries; therefore, Myer's will not be storing the inventory on site. The storage buildings will not be permanent structures; however, the carports will be anchored down. Mr. Delaney stated that during the past 10-12 years, South 4th Street

businesses has been dying off and going towards 12th Street; therefore, Myer's is trying to get something to draw business. He added that when Myer's bought the property to the south of Morris Refrigeration, they had a booming business with 25 employees and now they are down to 10. Mr. Delaney said that the plan is to have additional storage buildings of various sizes and styles assembled inside the gate. Chairman Whitaker asked how people would make the association of the carports and storage buildings with Myer's Lumber. Mr. Delaney said that hopefully they would see the lumber storage buildings and make that association. Mr. Delaney brought photos of the proposed buildings that he wishes to display. *These photos were entered as Exhibit A.*

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

John Krieb made a motion to approve the application for a conditional use permit to allow Myer's Lumber located at 500 S. 4th Street to display no more than three metal carports and/or portable storage buildings outside the fenced area on the south end of the property. The closest of the structures will be 15 feet off the east property line, and that the buildings closest to the property line be open carport style (which will be secured to the ground per building codes) to try and improve the visibility. All other products are to be kept behind the fenced in areas. There is to be no additional signage except for a three square foot identification sign. Justin Pounds seconded the motion and the motion carried with a 3-2 voice vote. Mary Anne Medlock and Steven Reed voted no.

Public hearing to review the conditional use permit application for outdoor storage of merchandise – 1205 Main Street – Walgreens: Peyton Mastera used a Power Point presentation to show the Walgreens building located at 1205 Main Street. Mr. Mastera stated that it was recently observed by Planning Staff that Walgreens has a Blue Rhino Propane display along the eastern walkway of the building. These displays are considered "outdoor storage of merchandise" and only allowed in a B-2 zone as a conditional use permit. Upon contacting Walgreens, they requested to apply for the conditional use permit to keep the Blue Rhino display.

Mr. Mastera stated that in addition, Walgreens is requesting to place a Red Box video rental kiosk along the walkway on the north side of the building. The manager from Walgreens, Davin Gambill, conveyed to staff that if this Red Box is successful, they may look to place a larger Red Box kiosk at this location in the future. Mr. Mastera added that there are currently two other Red Box locations in Murray. Both are located inside. One is located at Walmart and the other is at Kroger. Mr. Mastera explained that the difference in an outdoor coke machine and an outdoor Red Box is that a coke machine is classified as a Vending Service and requires only one business license and they pay an additional fee for each additional machine that is located in town. The Red Box is classified as Video Rentals; thus, they require a separate business license for each particular location. Mr. Mastera stated that these are becoming more and more popular. The size of the Red Box is 26" deep by approximately 90" tall by 72" wide. The machines are

designed for pickup or return of videos. Justin Pounds asked if there would be parking requirements associated with this type of business. The sidewalks are six feet wide on the north and east sides of the building. ADA required 36 inches for handicap accessibility and Mr. Mastera stated that Red Box would be taking care of those kinds of restrictions. Several of the board members commented on how well kept and clean the appearance was for the Walgreens building.

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

Davin Gambill, 1607 Parklane, Murray was sworn in. Mr. Gambill presented pictures of a Red Box kiosk that is located at the Paducah Walgreens store to give the board an idea how the box would look on the outside of the Murray store. *The pictures were entered as Exhibit A.* Mr. Gambill stated that dual Red Box dimensions (34" in depth x 110" tall x 108" wide) would be similar to the single machine. In order to qualify for a dual Red Box, there has to be a large amount of video rentals at that location. Mr. Gambill stated that the typical Red Box machine holds 500 DVD's and Walgreens would make 11% of the revenue that is brought in from the rentals. Walgreens has approximately 1000 customers per day and Mr. Gambill said that with the university being in close proximity and Walgreens having the only Red Box on the south side of town, that the possibility was there for video rentals to be successful. Mr. Gambill stated that Walgreens is hoping to draw more people into their store as well as offer their customers a much easier and accessible way to get their videos. The box will be located on the sidewalk under an awning to keep it out of the elements. Red Box is responsible for running the electricity to the box and doing the proper measurements to make sure it meets all guidelines for safety and accessibility. Walgreens is primarily a convenience stop for people and they pride themselves on people being able to get in and out quickly. They are a 24 hour store that is very well lit at night and in a safe neighborhood; therefore, they do not foresee any problems with having the Red Box located outside the store. Mr. Gambill added that Walgreens always tries to keep the outside of the stores neatly landscaped and presentable.

Mr. Gambill apologized for the propane tanks being displayed there without prior permission. He stated that the tanks had actually been there since he had become store manager and that was approximately three years. Mr. Gambill said that Blue Rhino took care of the licensing for Walgreens to sell propane and that he had been under the assumption that they took care of the permission to have it placed at that location as well. Mr. Gambill said that propane is not safe to store inside the store; therefore, they have it located outside, away from the entrance doors on the east side of the building where there is no parking.

Rob McGloan, 1205 Main Street, Murray was sworn in. Mr. McGloan is the Community Manager with Walgreens for western Kentucky. Mr. McGloan stated that the Blue Rhino tanks were put at that particular location because there was no parking on that side of the building.

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

Chairman Whitaker stated that Walgreens has always been one of his favorite projects since he's served on the BZA. He complimented their very well done brick building with great landscaping and added that he would probably vote against a larger kiosk should Walgreens decide to ask for one in the future. He thinks that this is a really nice retail store and that more clutter on the outside would move it in the wrong direction. John Krieb stated that he thinks that the Red Box would be an added competition for the south side of town. Mary Anne Medlock would like to see the kiosk placed inside the store because she feels that precedence has already been set at the other Red Box locations in Murray; and she is concerned about the already "tight" traffic situation where they are proposing to put the Red Box. David Roberts stated that since Movie Gallery is closing, there will be no movie rentals on the south side of town and that Red Box would be an advantage. Mr. Pounds stated that theoretically if the store rented 200 videos in a day, they would have 200 returns the next day and; therefore, traffic would increase.

Justin Pounds made a motion to approve the conditional use permit application for Walgreens at 1205 Main Street to allow outdoor storage of merchandise with the following conditions:

- **The existing Blue Rhino Propane display along the east side of the building on the walkway may remain**
- **The Red Box video rental kiosk may only be displayed along the north side of the building on the walkway**
- **Any expansion in size of the Blue Rhino display or Red Box Video rental kiosk beyond what was displayed at the BZA meeting will require approval by the BZA**

John Krieb seconded the motion and the motion carried with a 4-1 voice vote. Mary Anne Medlock voted no.

Questions and comments: Candace Dowdy announced that there would be a continuing education available on June 9th in Fulton and one on August 5th at Kentucky Dam Village.

Steven Reed stated that he had several people contact him with concerns about Tractor Supply outdoor storage. He wanted to know if the items that were outside of the fenced area were permitted. Mr. Mastera said yes, according to the conditions that were placed on the conditional use. Justin Pounds recalled that the BZA approved a certain amount of square feet for storage with a certain amount of that to be fenced. Mary Anne Medlock stated that she also had been approached by others concerning Tractor Supply and asked when their conditional use permit expires. Ms. Dowdy stated that the conditional use permit would not expire, but Tractor Supply could be reviewed on an annual basis if conditions were not being met. Ms. Medlock stated that she thought that a conditional use permit for outdoor storage would be for seasonal use, not permanent use and that maybe Tractor Supply shouldn't be in that location. Mike Pitman said that if there was a violation, that the permit could be revoked. Mr. Mastera stated that planning staff had worked with Tractor Supply to make sure they were in compliance, and that they are

currently meeting all the conditions. Mr. Pounds said that when Tractor Supply made their presentation for the conditional use permit, they proposed the reconfiguring of the road in the shopping center to be a straight through. He wanted to know if they were bound to carry this out if something happens and Zaxby's does not come to Murray.

Mike Pitman asked about the progress of Zaxby's. Ms. Dowdy stated that there were some issues to be worked out.

Steven Reed asked for clarification on the Aaron's parking requirements. He wanted to know why they were not required to have a parking variance according to their square footage. Mr. Mastera stated that the building previously existed and there was no change of use; therefore, they were allowed to keep the same existing parking requirements.

Steven Reed stated that Dr. Miliano's sign was up and there was no landscaping around it. Peyton Mastera stated that planning staff would follow up on that. David Roberts said that letters went out to businesses along 12th Street that were not in compliance with the landscaping around their signage and that they were given until August to come into compliance.

Justin Pounds made a motion to adjourn. Mary Anne Medlock seconded the motion and the motion carried with a unanimous vote. *The meeting adjourned at 6:30 p.m.*

Chairman, Bill Whitaker

Recording Secretary, Reta Gray