

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, JUNE 16, 2010
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, June 16, 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, Scott Seiber and Bill Whitaker

Board Members Absent: Tom Auer

Also Present: Candace Dowdy, Peyton Mastera, Mike Pitman, David Roberts, Reta Gray, Kyser Lough, Officer Steve Robinson, Sid Easley, Tammy Cothran, Kim Maddox 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 May 19, 2010 regular meeting.

John Krieb made a motion to approve the minutes from the May 19, 2010 regular Board of Zoning Adjustments meeting as presented. Mary Anne Medlock seconded the motion and the motion carried unanimously with a voice vote.

Candace Dowdy announced that the public hearing for a dimensional variance request by St. Leo's Church would be postponed until the next BZA meeting because there would not be a quorum.

Public hearing to review the conditional use permit application to operate a fraternity house in an R-4 zone – 103 North 16th Street – Pi Kappa Alpha Fraternity: *Justin Pounds asked to be recused from the hearing.* Candace Dowdy used a Power Point presentation to show the property owned by Pi Kappa Alpha fraternity where they are proposing the construction of a fraternity house at 103 N. 16th Street. Ms. Dowdy stated that the intention of the fraternity was to construct a house on this lot once sufficient funds were acquired. Recently the fraternity presented a site plan to the planning department that is pending approval. Ms. Dowdy stated that fraternity or sorority houses are only allowed in an R-4 zoning district as a conditional use. In 2005 the BZA approved a conditional use permit to allow Pi Kappa Alpha to reside at 103 North 16th Street with a condition that the conditional use permit be reviewed on an annual basis. At the same time, the board approved a variance on the size of the lot because it did not meet the zoning ordinance minimum requirements of 15,000 square feet for a fraternity/sorority at that location. The later condition no longer applies because the fraternity purchased the property directly to the north (formerly known as the Campus Barbershop) and after abolishing the interior lot line on the minor subdivision recorded plat, their lot size is now approximately 25,000 square feet. Recently Pi Kappa Alpha demolished both their previous home and the Campus Barbershop at 103 and 105 N. 16th Street, respectively. Ms. Dowdy stated that according to the zoning ordinance, fraternity houses are supposed to provide *one (1) parking*

space for every student based on maximum occupancy plus one (1) space for every resident manager and every regular employee on the premises. The fraternity house will not house any member and will only be used for social and meeting purposes; therefore, Planning Staff feels Pi Kappa Alpha would be more in line with the parking requirements of a “Convention Hall, Lodge, Club, Library, Museum, Place of Amusement or Recreation”. These requirements state that the fraternity would have to provide, *one parking space for each fifty (50) square feet of floor area used for assembly or recreation within the building.* The assembly or recreation section of this facility will be approximately 2000 square feet; thus, it will require 40 parking spaces. Ms. Dowdy said that the fraternity is asking for a 12 parking space variance from the Board of Zoning Adjustments on the basis of four things: 1) A letter submitted to the BZA by Murray State University on June 7, 2005 giving permission for members to utilize campus parking spaces after hours; 2) Pi Kappa Alpha would like to preserve as much “green space” as possible along N. 16th Street; 3) Only members of the Fraternity will be allowed to park in this lot as specified by the Housing Corporation; 4) No members will be living on site.

Ms. Dowdy said that since adjoining areas to the west and north are residential, the fraternity would be responsible for providing screening as specified by the zoning ordinance. In addition, the ordinance states that signage could not exceed 12 square feet for fraternity houses. Ms. Dowdy said that sidewalks on Farmer Avenue are in the five year sidewalk plan; therefore, the City would like to see the fraternity participate in putting in the sidewalks along Farmer Avenue. She stated that during new or expanded developments where there are no sidewalks, the City tries to take advantage of the opportunity in participating in the cost of the sidewalks. Ms. Dowdy said that once a set of plans were submitted for the fraternity, planning staff would review them to see if any type of stormwater detention would be required. Sanitation pick-up will be part of the approval process through the building permit application. Ms. Dowdy stated that the planning staff had recently spoken to Murray State concerning the letter that they had written in 2005 allowing the fraternity to use campus parking and they still agree for the fraternity to be allowed to do this and in addition Murray State agreed to waive the screening requirements along the south property line.

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

Sid Easley, 1610 Loch Lomond, Murray was sworn in. Mr. Easley was representing the fraternity. He confirmed the fraternity’s purchase of the Campus Barbershop and he added that VL Associates had drawn the new minor subdivision plat. Mr. Easley stated that there was room for eight additional parking spaces on the front of the fraternity; however, after consideration, they felt that the “green space” on the front of the building would be more appealing. Mr. Easley said that since this fraternity house would be used at night when there were limited students around the university, they would be able to use campus parking for additional parking. Mr. Easley added that they were anticipating beginning the building stage in approximately six weeks. Chairman Whitaker asked about the fraternity’s feeling concerning the sidewalk along Farmer Avenue. Mr. Easley said that if the City required it, they would do it and would welcome a sharing arrangement.

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.

Scott Seiber made a motion to grant a conditional use permit to Pi Kappa Alpha fraternity to operate at 103 N. 16th Street with the following conditions: no on-street parking; any expansion or alteration of the proposed facility will require approval by the BZA; the facility meets all City of Murray regulations; screening and landscaping requirements adjoining to Murray State University property is waived; 14 parking space variance with the findings that 1) A letter submitted to the BZA by Murray State University on June 7, 2005 giving permission for members to utilize campus parking spaces after hours; 2) Pi Kappa Alpha would like to preserve as much “green space” as possible along N. 16th Street; 3) Only members of the Fraternity will be allowed to park in this lot as specified by the Housing Corporation; 4) No members will be living on site; and, 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. Through the development of this property sidewalks will be provided along the north side of the property and the negotiation part will be between the city and the fraternity; and that signage will not exceed 12 square feet. John Krieb seconded the motion and the motion carried with a 5-0 voice vote. Justin Pounds returned to the meeting at 5:10 p.m.

Public hearing to review the dimensional variance application for a parking space variance - 1407 Main Street- T. C. Dinh: Candace Dowdy used a Power Point presentation to show the property at 1407 Main Street which is zoned B-1 (Neighborhood Commercial). A dimensional variance request was denied a couple of months ago because there was not sufficient parking at this location for that particular request. T.C. Dinh is currently in the process of buying the property and is also looking to purchase a 0.2585 acre tract of land (Harry Russell Estate) for additional parking that is located behind the building. (The process to rezone this property is currently underway and should be completed by the end of June taking it from R-4 to B-1.) The upper level of the building consists of ten residential apartments which have been in existence since 1969. The building does have the required fire rated separation between the residential and commercial use. Mr. Dinh is proposing to divide the lower level of the building (approximately 6,754 square feet) into two spaces with his restaurant, Dinh’s Vietnamese Eggrolls, on one side and lease the other side to a retail business. Ms. Dowdy stated that there are currently 33 off street parking spaces with the potential of approximately 27 more spaces available with the purchase of the new lot. She said that based on the proposed mixed use of restaurant, retail and residential, the parking requirements are: 15 parking spaces for retail of 3,041 square feet, 37 parking spaces plus 4 additional employees parking for a total of 41 spaces for 3,713 square feet of gross floor area for a restaurant, and 10 minimum parking spaces for the 10 residential apartments totaling 66 spaces for the three uses. The restaurant proposal has a seating capacity of 80 but Mr. Dinh is making renovations to the building to comply with building and fire codes

to accommodate an occupant load of 100 for some time in the future. Parking requirements based on a seating capacity of 100 is less than the requirements for the gross floor area. Mr. Dinh would like for the board to consider granting a parking variance for a period of three to six months to see whether the additional parking is needed before he spends the money to construct the parking area. The zoning ordinance states under general parking regulations that the area should be paved with an asphalt, concrete, brick or other properly bound surface, so as to be durable and dustless and that this process should be completed within one year from the date of parking lot construction.

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

Tammy Cothran, 4063 Airport Road, Murray was sworn in. Ms. Cothran was speaking on behalf of T.C. Dinh. Ms. Cothran stated that the reason they were asking for more time to develop the lot was because of the expense. She said that in addition to Mr. Dinh's expense of relocating and rebuilding his eggroll business, he will have the expenses of the former Owen's building renovation and the purchase of the lot in the rear. Ms. Cothran stated that Mr. Dinh feels that the majority of his business is walk-up traffic; therefore, he may not actually need the rear lot parking for some time. Ms. Cothran said that if Mr. Dinh is allowed to delay the paving of the additional lot for three to six months, this will free up his money to get his new building suitable for operating and if he sees that his business is being profitable before the time period allotted, he will pave the parking in the back at that time. Ms. Cothran added that the surrounding property owners were aware of what Mr. Dinh's intentions are and they are in favor of it. (She said that she had a letter from Matt B. at Main Street Pizza.) Ms. Cothran said that Mr. Dinh was anticipating closing on the lot sometime in July and if he was given an additional six months on completing the lot, he should have the lot paved in December or January. *Officer Robinson left the meeting at 5:40 p.m.*

Scott Seiber stated that if they were given three to six months on finishing a hard surface on the lot, that would put this timeline during the winter months and that would probably not be possible during that time of the year; therefore, the extension might possibly end up being a year before completion. Ms. Dowdy added that planning staff had received a statement from Murray State saying that they would not be contesting the parking variance.

Chairman Whitaker asked if there was anyone that wished to speak in opposition to the variance. 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 a six parking space variance at 1407 Main Street as requested by T.C. Dinh contingent upon PVA parcel 4-3-4A being rezoned and purchased by Mr. Dinh, with the requirements being that a gravel parking lot be installed in the rear of the property within 60 days of the purchase; that the appropriate screening, landscaping and all other requirements of the city be met; and that paving to a hard surface be completed within the standard one year of the purchase of the property. The applicant

must designate a minimum of ten (10) parking spaces for tenants of the residential apartments; existing parking lot should be restriped for maximum use; appropriate screening is along the south property line; and new parking lot must meet all city regulations. The conditions placed on the variance are for this use only and any change in the use or expansion or enlargement of the use will require additional review by the Board of Zoning Adjustments. 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. Steven Reed seconded the motion and the motion carried with a 6-0 vote.

Public hearing to review the dimensional variance application for additional wall signage – 1100 Chestnut Street – Taco John’s: Peyton Mastera used a Power Point presentation to show the proposed new location of Taco John’s. Taco John’s will soon be relocating to 1100 Chestnut Street (the old Krystal building). The free standing sign that is located at the current location will be moved from the present location to Chestnut and will not be modified; however, the sign will be lowered to eye level. Taco John’s is requesting a variance to place additional signage on the east and north sides of the building. To the east they would like to use a set of channel letters from their existing location that has a total of 7.66 square feet (8 foot 4 inches x 11 inches) and a small additional byline/tag line. On the north side, they would like to move and use the 12.56 square foot round aluminum sign which is a logo used by the corporation. This sign will be placed facing the drive thru lane. Mr. Mastera stated that the BZA approved a variance for a 6 foot 9 inch x 8 foot 9 inch wall sign and a 65 square foot freestanding sign for Krystal on October 22, 2003 which runs with the land. The proposed signage on the entire building will be 49.36 square feet which is less square footage than what was previously approved by the variance. Technically Taco John’s could put 59 square feet of signage in front of the building and they have chosen to put only 25 square feet.

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

Kim Maddox, 1918 Coopertown Road, Murray was sworn in. Ms. Maddox stated that Taco John’s was trying to utilize as much of their existing signage as possible. She added that the round sign that they are wishing to move is actually a requirement of Taco John’s International and if they are not allowed by the BZA to use it, they will need a letter stating that; thus, they are requesting to have it on the back of the building. She stated that the small byline/tag line is also required to have on their building and they do not currently have it on their building. Ms. Maddox said that they will be adding landscaping around the pole sign.

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 approve a wall signage variance for Taco John's at 1100 Chestnut Street for an additional 7.66 square feet of wall signage (channel letters) on the east side of the building and a 12.56 square foot aluminum sign on the north side of the building. This variance shall only apply to Taco John's and is not transferable to another business; the proposed signage on the entire building will be less square footage that what is allowed; and 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. Mary Anne Medlock seconded the motion and the motion carried with a 6-0 voice vote.

Discussion of sign regulations: Candace Dowdy discussed with the board that the sign ordinance is in need of an update. The monument sign regulations for 12th Street and 121 were adopted in 2005; however, there was not a solution for signage for shopping centers at that time. Ms. Dowdy stated that this matter was discussed at the Planning Commission meeting the previous night and it was suggested that the Chamber of Commerce send out a survey to local businesses for input on the sign regulations. Ms. Dowdy said that they have had public complaints that the sign regulations were anti-business; however, no one will ever tell them what they mean by that statement. She stated that they would welcome suggestions from the business owners and the board. She then added the need for regulations that accommodate businesses when it comes to temporary signs or banners. Clarification of the ordinance was also mentioned. Non-conforming signs present problems and with no provisions, they are difficult to get rid of.

Questions and comments: Peyton Mastera encouraged the board members to review Section IV, Article III of the zoning ordinance concerning dimensional variances.

Candace Dowdy reminded board members of the continuing education on August 5th.

Adjournment: Scott Seiber made a motion to adjourn. Steven Reed seconded the motion and the motion carried with a unanimous vote. *The meeting adjourned at 6:35 p.m.*

Chairman, Bill Whitaker

Recording Secretary, Reta Gray