

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, JULY 21, 2010
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, July 21, 2010 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5th Street.

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

Board Members Absent: Tom Auer

Also Present: Candace Dowdy, Peyton Mastera, Reta Gray, David Roberts, Mike Pitman, Pa-Lamin Sarr, Bill Adams 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 16, 2010 regular meeting. Candace Dowdy stated that there had been a correction to the minutes since the minutes were mailed to the board members.

Justin Pounds made a motion to approve the minutes from the June 16, 2010 regular Board of Zoning Adjustments meeting with the noted corrections. John Krieb seconded the motion and the motion carried unanimously.

Chairman Whitaker asked for approval of the minutes from the July 1, 2010 special meeting.

Scott Seiber made a motion to approve the minutes from the July 1, 2010 special Board of Zoning Adjustments meeting as presented. Mary Anne Medlock seconded the motion and the motion carried unanimously.

Public hearing to review an appeal – Denial of request to construct an accessory structure – 507 South Cherry Street – Pa-Lamin and Doris Clark Sarr: Peyton Mastera used a Power Point presentation to show the property at 507 South Cherry Street that is owned by Pa-Lamin and Doris Clark-Sarr. Mr. Mastera stated that the Sarrs had contacted the Planning Staff requesting to erect an accessory structure for purposes of their home-based business, Smiling Coast Tours, which has been in existence since December 3, 2008. On May 14, 2010 a letter was mailed by Planning Staff to the homeowners denying their request on the basis that Planning Staff felt the following provision of the Home Occupation Section in the Zoning Ordinance would not be met: “Home occupations shall be clearly incidental and secondary to the use for dwelling purposes” (Section III, Article 6.D.1.). Mr. Mastera said that the Sarrs filed an appeal on June 4, 2010 identifying reasons by which they felt they would not be in violation of the ordinance.

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

Pa-Lamin Sarr, 507 South Cherry Street, Murray, was sworn in. Mr. Sarr stated that he and his wife have operated an internet travel agency from their home since 2008. The travel agency books tours to Africa. At this time, the Sarrs would like to keep their business small; thus, there is no plan to hire additional staff. Mr. Sarr stated that their long term goal was to grow and move their business to a commercial zoned property; however, at this time, they did not wish to do this because of the costs of rent. Mr. Sarr

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explained that his sister would be moving into his home at 507 South Cherry Street into the room that is currently being used as office space. He stated that they had thought about adding a room on the side of the home where they could conduct their business; however, there is not enough room on the either side without encroaching on their neighbors. The Sarrs have approximately one acre of property to the rear of their home where they would like to construct a new accessory building. Board member Scott Seiber asked Mr. Sarr what size and type of building that they would like to construct. Mr. Sarr replied that they were thinking about a mobile home that would be approximately 30 feet x 30 feet. The Sarrs would like a structure that is already built where the only construction necessary would be the foundation. Mr. Seiber stated that a mobile home could present another problem with the structure having living quarters such as a kitchen, bedrooms and bath that could be the potential for a multi-family dwelling. Board member John Krieb stated that if the Sarrs were considering an office trailer, that would be a different situation. Mr. Sarr stated that an office trailer was not out of the question, but at this time, they just wanted to submit the application to see what their options were. Mr. Seiber asked Mr. Sarr if they had explored the idea of building on the back of the house. Mr. Sarr replied that that was not an option because of the location of the back porch and the financial burden. Justin Pounds, board member, explained to Mr. Sarr that the purpose of the Board of Zoning Adjustments was to look at all the gray areas and without a site plan to review, the board would not be able to make a definitive decision. Mr. Sarr stated that their intent was to make the appeal first and once they were granted permission to go forward they would decide exactly what type of structure they would need. Chairman Whitaker stated that an option would be to table this until Mr. Sarr comes up with an actual structure plan.

Chairman Whitaker asked if there was anyone that wished to speak against the appeal. Mr. Mastera stated that one of the neighbors, Belinda Johnson, 100 Garden Street, had sent an e-mail with concerns over property maintenance to this particular property. Mr. Mastera said that Heath Walls, 112 Spruce Street, also contacted the Planning Department with general inquiries. Chairman Whitaker closed the public hearing and turned it over to the board members for discussion.

Scott Seiber made a motion to table the appeal to deny the request to construct an accessory structure at 507 South Cherry Street until Pa-Lamin and Doris Clark Sarr could present a specific plan for an accessory building. John Krieb seconded the motion and the motion carried with a 5-0 vote. Steven Reed abstained from voting.

Public hearing to review the dimensional variance application for a five (5) parking space variance and variance to waive the screening requirement for the east side of the property – 317 Chestnut Street – Dean Cherry: Candace Dowdy used a Power Point presentation to show the property at 317 Chestnut where Dean Cherry (applicant) has submitted a preliminary site plan to the Department of Planning & Engineering for the construction of *Boulder's Restaurant*. This property is situated to the east of the Maxfuel gas station which is located at the corner of Chestnut and 4th Streets and is joined by an alley to the south. The property is located in a B-3 zone with Industrial Zoning located to the north and R-5 (residential) to the east. The property is currently owned by Robert J. Futrell and the sale of the property to Mr. Cherry is contingent upon the board reviewing and approving the request for the variances. Ms. Dowdy stated that the proposed site plan shows the building at 2,494 square feet. Based on this square footage, the Zoning Ordinance requires a total of 29 parking spaces. In reviewing the preliminary site plan, the applicant is able to provide 24 parking spaces; thus, Mr. Cherry is requesting a five parking space variance. Ms. Dowdy said that the owners were targeting not only drive-up traffic, but walk-up traffic as well. Originally the site plan was showing traffic entering on North 3rd Street and exiting on the alley way on the south side of the building; however, since the roadway is approximately 20 feet wide and no one is sure who actually owns the alley, Planning Staff decided to request that the site

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plan be redrawn to show the traffic entering and exiting the premises on North 3rd Street. By eliminating a couple of parking spaces from the original plan, appropriate access for sanitation pick up has been justified with Don Rogers from the Sanitation Department.

Ms. Dowdy stated that the applicants were also looking to waive the screening requirements along the eastern property line. According to Section III, Article 3.D.2 of the Zoning Ordinance, screening should be provided adjacent to any property located in a residential zone. Along the eastern property line is a relatively narrow grassy area. The proposed parking lot will go up to the property line which will be approximately 7 ½ feet from North 3rd Street. Since the property line will adjoin the parking lot and there is no means for a 10 foot separation strip with subsequent landscaping, the applicant is requesting to waive the screening requirements along North 3rd Street. Ms. Dowdy said they the Planning Staff did receive a call from Murray Art Guild director and they had no objections to the proposed requests.

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

Bill Adams, Adams Construction, Murray, Kentucky was sworn in. Mr. Adams represented Mr. Dean Cherry. Mr. Adams stated that Mr. Cherry and Mr. Bobby Luffman are proposing to construct a restaurant contingent upon the decision of the BZA. The Phase 2 Environmental Study and the Stormwater Management Plan and Analysis have already been completed. Mr. Adams said that the restaurant will offer indoor, carry out and catering services and will be targeting industrial sites with only 30 minute lunch periods; therefore, most of their customers will not be coming in to sit for a long period of time. The benefits of the location are that a restaurant will serve a need for that particular area of town and it is very efficient for a land use situation because of the limited size of the lot. Mr. Adams said that ordinance requires them to calculate parking based upon the square footage of the building (which requires 29 parking spaces). The other means to calculate parking requirements is by seating capacity. Based on this, 22-23 spaces are required. Mr. Adams stated that over 50 percent of the building will be kitchen which is unusual in a restaurant environment as this type of restaurant will be serving a different clientele.

Mr. Adams then reviewed the closest access point off N. 3rd Street from Chestnut and justified the variance from it.

Mr. Adams then addressed the screening issue. He stated that R-5 is the least restrictive residential zone and that lies to the east of the proposed restaurant which is located in a B-3 zone. Mr. Adams said that this particular construction should not be a detriment to the neighborhood. There are currently only a couple of houses located on North 3rd Street across from this construction site and they are unoccupied. Ms. Dowdy stated that since this property is a corner lot, the ordinance states that a fence would have to maintain a 25 foot side setback from the street; therefore, there is not sufficient room for screening on the east side. Pictures of the proposed restaurant were passed out to the board and entered as *Exhibit A*.

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 approve a five (5) parking space variance, to waive the requirements of Section I, Article 3.E. 3.b with regard to off street parking access points from public street, and to waive the screening requirements along the eastern property line for the proposed restaurant at

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317 Chestnut Street (applicant, Dean Cherry) contingent upon the transfer of property from the existing property owner to the applicant and the development meeting all city regulations. This variance is granted with the findings that this lot is smaller in size; it will attract walk-up patrons from the surrounding residential areas and businesses; the landscaped area cannot be provided due to lack of right-of-way along N. 3rd Street; this variance is only valid for a restaurant requiring no more than 29 parking spaces; any addition or expansion of the restaurant is subject to review by the City of Murray. 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. John Krieb seconded the motion and motion carried with a 6-0 voice vote.

Questions and Comments: Candace Dowdy reminded the board of the Continuing Education that is coming up on August 5th.

Adjournment: Scott Seiber made a motion to adjourn. Justin Pounds seconded the motion and the motion carried with a unanimous vote. *The meeting adjourned at 6:00 p.m.*

Chairman, Bill Whitaker

Recording Secretary, Reta Gray