

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
THURSDAY, AUGUST 18, 2010
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Thursday, August 18, 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, Tom Auer and Bill Whitaker

Board Members Absent: None

Also Present: Candace Dowdy, Peyton Mastera, Reta Gray, David Roberts, Mike Pitman, Pa-Lamin Sarr, John Bowers, Kelsey Sykes, Bobby Deitz, Hawkins Teague 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 July 21, 2010 regular meeting. Candace Dowdy stated that there had been corrections to the minutes since the minutes were mailed to the board members.

Scott Seiber made a motion to approve the minutes from the July 21, 2010 regular Board of Zoning Adjustments meeting with the noted corrections. Mary Anne Medlock seconded the motion and the motion carried unanimously.

Chairman Whitaker asked for a motion to remove from the table the application from Pa-Lamin and Doris Clark-Sarr of 507 South Cherry Street.

Scott Seiber made a motion to remove the item from the table. Justin Pounds seconded the motion and the motion carried unanimously.

Review of appeal – 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 where Pa-Lamin and Doris Clark-Sarr reside. The Sarrs are requesting to put an accessory building out back of their residence for purposes of their home-based business, *Smiling Coast Tours*. A letter was sent to the Sarrs on May 14, 2010 denying their request based on the fact 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.). In turn, the Sarrs filed an appeal on June 4, 2010 in which they included the reasons why they felt their application should not be denied. On July 21, 2010 the BZA directed the Sarrs to come up with a more definitive site plan to give the Board an idea of what kind of structure would be placed in the rear yard; thus, the appeal was tabled until the Sarrs could come up with a definitive plan for their structure. Mr. Mastera stated that he had been to the Sarrs residence and that he and Mr. Sarr measured the backyard location where the storage building would be put. The backyard area is 45 feet x 85 feet. Mr. Mastera

showed the pictures of the 12 ft x 32 ft storage building that the Sarrs are proposing to use as the office for their business.

Chairman Whitaker stated that he was caught between the concept of building a building on your private property in a residential zone to have a business and having an existing accessory building that you may take up a hobby in and use it as a business. Mr. Mastera stated that the intent of the home occupation is to be able to drive by and not be able to tell that there is a business taking place there; however, having to add on to expand what you already have there because you can't accommodate for this business is defeating the intent of the Home Occupation Section.

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 since they had started their business, they had been working with the Planning Staff anytime they had to make a change to their business. Mr. Sarr revealed that his sister had moved into the room that had previously been designated for their home occupation and now they need additional space to operate the business. He said that with regards to the business operations, they would still be operating the same as they currently are. The business is an internet based travel company where all of the tours and bookings are done on-line and there is no traffic generated from the business. Mr. Sarr said that he thought that coming to the BZA first (before he actually bought and put in an accessory structure) was the proper thing to do in order to relocate the office. Chairman Whitaker asked Mr. Sarr if electricity would be run to the building where they could have heat and air conditioning. Mr. Sarr said that it would have electricity and there would be no plumbing in the building. Mr. Sarr stated that he had spoken with the company in Paducah that sells the storage buildings and that he had selected the 12' x 32' model. The company will customize the building to your specifications. Mr. Sarr said that he had plans to have windows and doors and a small porch on the front of the building.

John Bowers, City Council member, was sworn in. Mr. Bowers asked Mr. Sarr about the foundation for the building. Mr. Bowers stated that the building did not have the stability where it could just be placed directly on the ground and that there would have to be a concrete footer or concrete block foundation. Ms. Dowdy confirmed that the building official would require a footer foundation. Mr. Sarr stated that he had spoken to the people that set the building up and they said they would be responsible for the foundation work and that it will be anchored to the ground. Mr. Sarr said that they would be following the codes of the city.

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

Commissioner Krieb stated that the purpose of the Board of Zoning was to look at each situation individually and decide what was best for each one. Scott Seiber stated that he could make a

reasonable case for either side of the matter. Mary Anne Medlock clarified that the board was being asked to determine whether the Planning Staff had made the correct decision in declining the request. They were not being asked to make the decision to grant the initial request from the Sarrs. Ms. Medlock added that there was no secondary use for the structure, that the structure was primarily being used for the business; therefore, according to the ordinance, it would not be a viable reason to approve the request. Justin Pounds stated that the building is a storage building; however, when it is used as a full time office, it becomes commercial. David Roberts stated that the next person that occupied the premises would have the building and it would be suitable as an accessory building for storage; thus, the building would not be uniquely constructed for commercial purposes.

Justin Pounds made a motion to deny the appeal and support the Planning Staff findings. Tom Auer seconded the motion and the motion carried with a 5-2 voice vote. John Krieb and Scott Seiber voted no.

Public hearing to review the conditional use permit application to allow a “second hand” store in a B-1 zoning district – 1415 Main Street – Kelsey Sykes: Candace Dowdy used a Power Point presentation to show the property at 1415 Main Street where Kelsey Sykes would like to open a small “second hand” store. The building consists of three individual spaces and is owned by Mr. Leslie Parrish. Ms. Sykes is hoping to lease the 390 square foot space that is located on the west end of the building. Ms. Sykes would like to open a small “second hand” store that would offer new and used clothing, home décor, and antique items at reasonable prices. This location is in a B-1 zoning district and it is the opinion of the Planning Staff that this type of business would only be allowed as a conditional use. The only entrance to the store is located off Main Street. Ms. Dowdy explained that there are two designated parking spaces in front of the building as well as additional parking in the rear of the building. Customers could access the front of the building from a concrete walkway that is 4’9” wide and located between the building she will be leasing and Massey’s BP station. Ms. Dowdy stated that she had contacted Hugh Grey Massey and he did not have any issues with customers using the walkway to access any of Mr. Parrish’s tenant spaces. Ms. Dowdy stated that they had discussed signage with Ms. Sykes and she will be able to put a wall sign on the face of the building and use lettering on the door. Ms. Dowdy said that Ms. Sykes is hoping to target college students since she is in close proximity to the campus. Mr. Seiber asked if there were tenants that lived upstairs and Ms. Dowdy stated that she did not know. Ms. Dowdy stated that in 2004 Mr. Parrish came before the board and requested an additional wall sign for the pizza parlor that was located within the bowling alley. Part of that 2004 motion was that the front of the building be cleaned and that the back of the building be painted. Ms. Dowdy stated that she did not know if that part of the motion had ever been carried out. She added that Planning Staff could discuss cleaning up the front of building with Mr. Parrish.

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

Kelsey Sykes, 1307 Farris Avenue, Murray was sworn in. Ms. Sykes stated that Mr. Parrish's daughter and her husband currently occupy the upstairs of this building. Ms. Sykes does not know if Mr. Parrish had previously cleaned the front of the building, but she agreed that it is in need of being cleaned and painted and new awnings added. Ms. Sykes stated that she would be glad to speak to Mr. Parrish concerning these issues; however, she said that Mr. Parrish is not in the best of health and that may be the reason for his lack of maintenance to the building. Mr. Parrish had told her there was additional parking in the back of the building for her customers to use. As far as signage goes, Ms. Sykes would like to have a sign above the side window and maybe some lettering on the door on the front. She has been working with the Planning Staff for guidance on that. Ms. Sykes said with added shelving and a small dressing room in the back, she thinks this small space would be sufficient for her to get started. Hours of operation have not been clearly established at this point; however, Ms. Sykes is thinking maybe Monday through Saturday from 10 a.m. until 7 p.m. and she is targeting college students.

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 approve the conditional use permit for Kelsey Sykes at 1415 Main Street (property owner: Leslie Parrish) to operate a "second hand" store. Any expansion or deviation from the scope of this business will require review by the City of Murray. Mary Anne Medlock seconded the motion and the motion carried with a 7-0 voice vote.

Compatibility hearing for a planned development project – 411 South 12th Street – Huck's: Peyton Mastera used a Power Point presentation to show the north east corner of South 12th and Sycamore Streets where Huck's is proposing to build a 24 hour convenience store. This property is located in a B-4 (Medium Density Business) zoning district with B-4 to the North, R-2 (Single Family) to the East and B-2 (Highway Business) to the South and West. The Huck's project will be required to go through the Planned Development Project process because they will have a restaurant inside the facility. (Section III, Article 6 of the Zoning Ordinance) The restaurant will have a seating capacity of 12 and a drive-thru window along the north side of the building. Mr. Mastera stated that a minor plat had been submitted by Huck's on the four tracts of land they recently purchased and consolidated into one tract. The first step in the Planned Development Project process is an Advisory Meeting with the Planning Commission and that was conducted on August 17, 2010. At that time the Planning Commission agreed to forward it on to the Board of Zoning for the second step in the PDP process which is the compatibility hearing. This step is for the board to decide if the project is compatible with the surrounding area. Mr. Mastera stated that Huck's will be constructing a 4050 square foot building along with an additional 6832 square foot canopy over eight gas pumps. Mr. Mastera went over some of the issues noted by Planning Staff to be reviewed by both the Planning Commission and BZA through the Planned Development Process and they are: clear zone visibility, monument signage location, wall signage, landscape requirements, out-door storage of merchandise, parking, traffic impact, and hours of operation for a restaurant. Mr. Mastera said that Geo Tech had submitted the current

site plan and that each entrance has been moved as far away from the intersection as possible. Landscaping/screening in accordance with the ordinance will be required on the east side of the property since it adjoins residential zoning. There has been a traffic study to review the impact at this intersection and the street should be able to handle the traffic capacity. Mr. Mastera added that whatever is put on that particular corner would incur the same situation concerning the traffic.

Chairman Whitaker asked if there was anyone that wished to speak in favor of the project.

Bobby Deitz, 645 Swift Road, Kirksey, Kentucky was sworn in. Mr. Deitz, representative of Geo Tech, stated that this had been a difficult project for Geo Tech and that it had not moved as quickly as they were accustomed to. Mary Anne Medlock asked Mr. Deitz about the signage location and the clear zone. Mr. Deitz said that he had actually forgotten about the clear zone until the previous night at the Planning Commission meeting. He said that they would probably have to attach the signage to the canopy like Kroger did on North 12th Street. Mary Anne Medlock asked Mr. Deitz about the landscaping and if there would be consideration for additional landscaping to the north and on the sidewalk areas. Mr. Deitz stated that he did not know. John Krieb asked Mr. Deitz about the delivery of gas and the maneuverability of the tanker trucks. Mr. Deitz said that he had questioned Huck's about that himself and they said they had looked at it and that they could get a truck in there; however, he does not know which entrance they will be bringing it in. Mr. Deitz said that the owners were unable to be there at the meeting and he was hoping that they would be in attendance at the next meeting so that they could answer these types of questions. Mr. Deitz conveyed that there would be a Godfather's Pizza located inside. Scott Seiber asked how many parking spaces were shown on the site plan and Mr. Deitz answered 23 spaces.

Chairman Whitaker asked if there was anyone that wished to speak in opposition to the project. There was no one.

John Krieb made a motion that the proposed Huck's Planned Development Project at 411 South 12th Street is compatible to the surrounding area. Justin Pounds seconded the motion and the motion carried with a 7-0 voice vote.

Questions and Comments: None.

Adjournment: Justin Pounds made a motion to adjourn. Scott Seiber seconded the motion and the motion carried with a unanimous vote. *The meeting adjourned at 6:05 p.m.*

Chairman, Bill Whitaker

Recording Secretary, Reta Gray