

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, APRIL 20, 2011
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, April 20, 2011 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5th Street.

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

Board Members Absent: Brad Darnall

Also Present: Candace Dowdy, Peyton Mastera, David Roberts, Mike Pitman, Reta Gray, Officer Darren McCuiston, Jimmy Taylor, Quentin Hines, Pat Cafferty, Ida Toko, Richard Maddox, Sue Hood, Angela Thomas, William Jones, Jack Calbert, Bill Schell, Barry Brown, Eddie Young, Marcy Johnson, and Patsy Dills Tracy

Chairman Whitaker called the meeting to order at 4:30 p.m. and welcomed all guests and applicants. Chairman Whitaker asked if there were any changes, additions or deletions to the minutes from the March 16, 2011 regular meeting.

Scott Seiber made a motion to accept the minutes from the March 16, 2011 Board of Zoning Adjustments regular meeting as presented. John Krieb seconded the motion and the motion carried unanimously.

Public Hearing: Dimensional variance application for accessory structure in front yard – 1723 Keenland Drive – Jimmy Taylor: Peyton Mastera used a Power Point presentation to show the carport erected in the front yard of the applicant, Jimmy Taylor, at 1723 Keenland Drive. Mr. Mastera stated that when the two car carport (approximately 26 feet x 22 feet) was installed over a year ago the company from whom Mr. Taylor purchased the carport told him that it was not necessary to have a building permit nor did the structure have to be placed in a rear yard since it would be detached from the house. (Mr. Mastera stated that since this matter occurred, he sent a letter to the accessory structure company explaining the City of Murray's policy regarding carports and other accessory structures and clarified that they are required to be placed in the rear yard and meet all setback requirements.) Mr. Mastera said that this property is unique in the sense the house is situated only seven feet from the western property line. This negates any way to access the rear yard unless an additional drive is created on the opposite end of the house. This older home was constructed before 1972; thus, the garage (8 ½ feet x 7 feet) was not built to accommodate a vehicle of Mr. Taylor's size. Mr. Mastera stated that in 2006 and 2007 Planning Staff received several carport requests and at that time they took a quick inventory of the freestanding carports within the city limits. Mr. Mastera said that there are presently several carports in front yards without dimensional variances and showed pictures of the ones located at 1302 Sycamore Street, 210 S. 11th Street, 222 S. 11th Street, 211 S. 15th Street, 402 N. 17th Street, 803 N. 18th Street, 1102 Vine Street, and 1405 Henry. Mr. Mastera added that it is difficult for the city to have an accurate count of carport businesses unless they are located in

the city or have purchased a business license and that Planning Staff is doing their best to alert local businesses to make them aware of the city ordinance concerning accessory structures. Mr. Mastera stated that Mr. Taylor will be required to get a building permit so that the City's Building Inspector can inspect the structure and see that it is properly anchored.

Candace Dowdy stated that during a recent drive-by she noticed the carport. She checked the inventory list when she arrived back at the office and saw that Mr. Taylor's accessory structure was not on the list; therefore, she sent Mr. Taylor a letter informing him that the accessory structure could only be placed in a rear yard unless he received an approved variance from the Board of Zoning Adjustments.

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

Jimmy Taylor, 1723 Keenland, Murray was sworn in. Mr. Taylor stated that he had resided at that address for 15 years with his mother. Mr. Taylor said that he initially was going to build a garage to store his new 4 door Dodge Ram pickup in and after finding out that would cost him around \$20,000 he decided to put up a carport. Mr. Taylor went to Hazel and purchased one. He stated that he would not have put the carport there if he knew that it was against the City Ordinance. He said that he did not understand why the business where he bought the carport didn't tell him about these city requirements. Chairman Whitaker asked why the house was located only seven feet from the property line. Mr. Mastera said that when the house was built, that property was not in the city limits; therefore, the restrictions were different. Scott Seiber asked Mr. Taylor how the structure was attached. Mr. Taylor said that long bolts were driven into the ground to anchor it. Mr. Taylor said that he thought there were possibly four on each side of the carport. Ms. Dowdy asked Mr. Taylor if any of the adjoining property owners had complained about the structure. Mr. Taylor stated that the neighbors had said that they liked it and they wanted one.

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.

Mr. Mastera said that in the Zoning Ordinance update there had been discussion concerning carports being allowed in a side yard. He said that as it is now, they are required to be placed in the rear yard and in Mr. Taylor's situation there is no room to get to the structure from the side yard. Mary Anne Medlock stated that there should be some recourse to the company that sold the carport to Mr. Taylor and told him that it was allowable. Mr. Seiber said that a change in the ordinance would not change anything in a situation like Mr. Taylor's because they have no alternative but to place the structure in the front yard.

Mary Anne Medlock made a motion to approve the Dimensional Variance application of Jimmy Taylor to place an accessory structure (two-car carport) in the front yard area at 1723 Keenland Drive. (Mr. Taylor is required to go through the building permit process.)

This variance only applies for the existing two-car carport at its present location and any expansion or alteration to this accessory structure will require approval by the BZA. This is based upon the findings that the existing principle structure's garage is relatively small compared to today's standards 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. Scott Seiber seconded the motion and the motion carried with a 6-0 voice vote.

Compatibility Hearing: Commercial Planned Development Project – 300 North 12th Street – Dunkin Donuts: Candace Dowdy used a Power Point presentation to show the property at 300 North 12th Street where Four Dough Holdings, LLC is proposing to construct a 3,650 square foot building with two tenant spaces of equal size. One of the spaces will be occupied by Dunkin Donuts and the other space is being reserved for a smaller restaurant/sandwich shop. Ms. Dowdy stated that this item was presented to the Planning Commission on the prior night for an Advisory Meeting and the commissioners unanimously voted to send it on to the BZA for compatibility. She said that the applicants have purchased the property located at 300 and 302 North 12th Street in addition to 1016 Sharpe Street. The total acreage for all three tracts of land is 0.60 acres and is zoned B-4 (Medium Density Business). A minor subdivision plat consolidating all three lots will need to be submitted to the Planning Department for review and approval prior to any permits being issued. Restaurants in the B-4 zone are typically approved through the PDP process; therefore, the project will be reviewed as a PDP since the seating for Dunkin Donuts will exceed ten and the other tenant space will be a restaurant. Some of the things that will be considered for this project are: the additional access off Sharpe Street into a residential zoning district, the required screening along the east property line that adjoins a residential zoning district, stormwater detention, parking variances, outdoor lighting, sidewalks, landscaping, traffic impact, hours of operation for each establishment, clear zone visibility, monument and wall signage locations and sign variances. Ms. Dowdy stated there had been some questions concerning the narrow width of Sharpe Street. Sharpe Street has a 50 foot right-of-way and there is no curb and guttering along the street. She added that Planning Staff has requested that the engineering firm keep the 50 foot clear zone clear in order to prevent visibility issues. Ms. Dowdy said that an elevation drawing of the building has been presented along with a site plan. The site plan has areas that need attention and improvements made once the project moves forward. Ms. Dowdy reviewed other restaurants along 12th Street that have additional access into residential districts. During the rezoning process, the Comprehensive Plan and Land Use were updated and the Planning Commission looked at changes to properties along the 12th Street corridor in order have the depth of some of the properties more conducive for commercial development. Ms. Dowdy stated that Ms. Susan Solomon, adjoining property owner to this project, attended the Planning Commission meeting the previous night and voiced some of her concerns. One of her concerns was the landscape screening between her property and the proposed construction site; she would like to see them continue the white vinyl fence that now surrounds her property and add Leland Spruce. Ms. Dowdy added that Scott Morris and Michael Spalding, representatives for the project, were present if anyone had any questions for them.



Scott Seiber made a motion that the application filed by Four Dough Holdings, LLC is compatible with the surrounding area. John Krieb seconded the motion and the motion carried with a 6-0 voice vote.

Public Hearing: Conditional Use Permit Application to Allow Go Kart Racing as Privately owned Outdoor Amusement Area - 800 Chestnut Street - Quentin Hines and Bruce Carter: Peyton Mastera used a Power Point presentation to show the property at 800 Chestnut where Quentin Hines and Bruce Carter are again applying for a Conditional Use Permit to allow go kart racing as a privately owned outdoor amusement area. This property is zoned B-2 (Highway Business) and the request is only allowed thru a Conditional Use Permit. The applicants applied two months ago for a Conditional Use Permit similar to this request with the only difference being that the first request was for gasoline powered go karts and this request is for electric powered go karts. The BZA denied the former request with the findings being the noise effects to the area, the attractive nuisance, and the potential impact on property values in the area. Mr. Mastera stated that with an electric powered go kart the noise effects would be cut down in the neighborhood and the emission concerns should be alleviated. Chairman Whitaker asked Attorney Mike Pitman to give an explanation why this matter could be brought back before the Board of Zoning Adjustments. Mr. Pitman stated that the Planning Commission or the Zoning staff does not make the determination on people being able to file an application. He added that City Hall doors are always opened for people to come back if they have a substantial change in their application. Mr. Pitman explained that the board operates under these rules and this does not mean that they are either for or against the application.

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

Quentin Hines, 81 Princeton Drive, Murray was sworn in. Mr. Hines stated that he took the advice of the board members at the prior meeting and tried to find another suitable location for the track and he was unable to locate one. Mr. Hines said that he went to Candace Dowdy and

asked her if the City could help him find another location and Candace told him that they could not. Mr. Hines said that he really wanted to make the location at 800 Chestnut work for him; therefore, since the noise was such a big issue at the prior meeting, he decided to check into the electric powered go karts which are a new technology, produce zero emissions and are the quietest go karts on the market. Mr. Hines passed out handouts from Electra Motorsports to the Zoning board members. *Handout was submitted as Exhibit A.* Mr. Hines explained that the go karts are actually remote controlled; thus, if you are serving a younger customer, you can control their speed. Mr. Hines said that he looked into the other concerns also. He said concerning the traffic situation, he felt that this business would not be more of a traffic concern than any other business that could go in at that location. Scott Seiber stated that he had rode go karts in the past and to him the thrill was to make noise. Mr. Hines said that the go karts would not be totally silent but the decibels were less on the electric go karts than the gasoline powered ones and when they are sitting still, you hardly know that they are running. Justin Pounds stated that there were some concerns about the aesthetics of a temporary fence at the prior meeting and he asked Mr. Hines if he would like to address that matter. Mr. Hines stated that he would like to surround the track with tires that are securely bolted together and place a three foot tall water filled border system outlining the tires. The temporary fence that was proposed earlier would be eliminated; thus, preventing the business from being an eye sore. Mr. Mastera asked Mr. Hines what his hours of operation would be and Mr. Hines replied from 1 p.m. to 9 p.m. seven days a week. Chairman Whitaker stated that in the previous meeting there was a concern for noise during funerals at the adjoining cemetery. Mr. Hines said that the electric go karts would be within the Noise Ordinance and that they are not loud enough to be a distraction. Steven Reed stated that as business owner himself he did not know how Mr. Hines could make a profitable business with only six or eight go karts. Mary Anne Medlock stated that even though Mr. Hines had addressed some of the issues that were concerns from the previous meeting, there will still be several issues that were not addressed. Mr. Pounds said that he would like to see some type of buffer zone for safety and he is very concerned with the appearance. Mr. Hines concluded by saying that he wanted a place to locate the business where the kids were and everything was happening and Chestnut Street next to the City Park seemed like a good location to him.

Pat Cafferty, 89 Princeton Drive, Murray was sworn in. Mr. Cafferty stated that Mr. Hines had been diligently trying to find ways around the issues that were stated at the previous meeting. Mr. Cafferty said that Murray needs something like this and Mr. Hines desperately needs the board members ideas as to what he can do to make this business a reality.

Ida Toko, 1405 Main Street, Murray was sworn in. Ms. Toko said that she works at a convenience store near the university and that she comes in contact with the college students daily. She added that the college students have voiced to her that there is nothing to do in this town. Ms. Toko stated that she thinks this proposal will be a much needed activity for the Murray area.

Chairman Whitaker asked if there was anyone that wished to speak against the application.

Murray Board of Zoning Adjustments Regular Meeting
Wednesday, April 20, 2011

Richard Maddox, 310 North 8th Street, Murray was sworn in. Mr. Maddox thanked the board for the work that they do by making sure there is a nice fit when a new business comes to town and that the business is compatible to the area. Mr. Maddox said that even though the engines of the go karts would not make noise, the tires would. Mr. Maddox concluded that he thought if there was one place that a go kart track should not be located it would be next to a cemetery.

Sue Hood, 405 North 7th Street, Murray was sworn in. Ms. Hood said that she had brought some videos of electric go karts and she asked Mr. Mastera to play one of them. After watching and listening to the video, Ms. Hood stated that squealing tire noise would certainly be a nuisance. She added that some of the neighbors that had attended the previous meeting two months ago were not able to attend, but the consensus is still that the neighbors are for the go kart track, but not the proposed location because of the inappropriateness. Mr. Pounds said that he was not going to argue that the go karts were going to make noise and their tires were going to make noise, but he did not think the video that Ms. Hood brought was a fair comparison to what would actually go on at the track. Ms. Hood stated her concern with the enforcement of the permit as well as the safety issue if the application should be approved. Ms. Hood respectfully requested that the board deny the application.

Angela Thomas, 416 North 8th Street, Murray was sworn in. Ms. Thomas stated that she lives immediately adjacent to the proposed go kart track. She added that she also has four rental units there and her ability to rent the units could be compromised. Ms. Thomas said that her property values would definitely be affected if the go kart business is allowed to locate there. She stated that her ability to use her outdoor patio would also be greatly diminished. Ms. Thomas said that since this location is next to the beautiful cemetery, it is inappropriate. Ms. Thomas stated that she too had listened to some videos on U-Tube and there were megaphones and loud speakers announcing events at the tracks. Ms. Thomas concluded by saying that the proposed go kart track is in violation of our City Noise Ordinance.

William Jones, 802 Olive Street, Murray was sworn in. Mr. Jones stated that he agreed with each of the issues that had already been mentioned. Mr. Jones said that he has an eight year old son that is very unhappy with Mr. Jones's presence at the meeting. He said that his son had heard about a go kart track fairly close to their house and he was excited about it. Mr. Jones said that the argument that "this is where the kids are" made by Mr. Hines concerns him. Mr. Jones said that if there was a reasonable go kart track located in the county, he would drive his son there. Mr. Jones said from what he had heard at the meeting concerning the screeching of the tires and the water barriers, he felt that this business would be dangerous not only to pedestrians, but to children that will jump the barriers and end up on the track. Mr. Jones said that he thinks that the current design of the track is questionable and that he would not allow his son to go there.

Jack Calbert, 208 North 10th Street, Murray was sworn in. Mr. Calbert said that he lives near the park and that he is in the park quite often. He added that the park is a very popular place for families, children, and dogs. Mr. Calbert said that the park also has the city's major cemetery located next to it and he cannot see this type of business in this locality. Mr. Calbert stated that

Murray Board of Zoning Adjustments Regular Meeting
Wednesday, April 20, 2011

he grew up in rural Kentucky in the late 40's and 50's and he has certain ideas about what a cemetery should be. He said that it should be a place of peace and quiet. Mr. Calbert concluded by saying that if this business is allowed to go right next to the cemetery, he is certain that it will draw a lot of complaints.

Bill Schell, 406 North 8th Street, Murray was sworn in. Mr. Schell stated that when Mr. Hines said there was nowhere else in town where this could go said this under oath and he felt that this was a false statement. Mr. Schell added that the area that is being proposed is not large enough for a go kart track and it is unsafe.

Barry Brown, 511 North 7th Street, Murray was sworn in. Mr. Brown said that the noise issue presents a problem. He said it was not necessarily the amount of decibels, but how often the noise occurs and how certain pitched sounds carry. He said that the engines won't be completely silent and a track that is in operation seven days a week from 1 p.m. to 9 p.m. would certainly generate noise. The other concern that Mr. Brown had was that the area is not zoned for this type of business and that the proposed site is too near a residential area, the city park and a cemetery. He said that he would be concerned about the image that this business would portray during funeral services. In conclusion, Mr. Brown said that he would like to see something rather than a penciled drawing site plan if this matter should come back before the board again.

Eddie Young, 303 North 8th Street, Murray was sworn in. Mr. Young stated that when exceptions are made to the ordinance, it should be for something that the neighborhood welcomes.

Marcy Johnson, 410 North 7th Street, Murray was sworn in. Ms. Johnson said that where she resides she thinks that the noise might be mitigated. She stated that she is touched by the people who have brought up their concerns for the respect that should be given to the cemetery. Ms. Johnson said that she found it difficult to imagine that this business and the cemetery would coincide. Ms. Johnson said that she has much respect for Mr. Hines's initiative; however, she thought that this could prove to be detrimental to the safety of the children crossing the streets.

Patsy Dills Tracy, 1519 Canterbury, Murray was sworn in. Ms. Tracy applauded the board for listening to the pros and cons of the entrepreneurship. She reminded the board that Murray is one of the 100 Best Communities for Children. She said that Mr. Hines is aware that there are drugs out there affecting the adolescents and that there is a need for more entertainment and fun in Murray. Ms. Tracy stated that she feels there are other types of entertainment to keep our young people entertained and we should look for better ways to zone this entertainment and to keep drugs out of our community.

Chairman Whitaker asked for a show of hands of the persons that were in favor of the application. He then asked for a show of hands of the persons that were in opposition to the application. The opposition showed many more hands.

Chairman Whitaker asked if there was any rebuttal.

Quentin Hines came forward. Chairman Whitaker said that he was a little disappointed in the lack of detail in Mr. Hines's drawing given the fact that Mr. Hines and his father have operated other go kart businesses previously. Chairman Whitaker stated that he knew nothing about go kart tracks; however, the drawing looked small. Ms. Dowdy said that she was at fault that Mr. Hines did not have another site plan. She said that since nothing had changed since the previous application, she told him it was ok to submit the same plan. Mr. Hines asked the board what he would have to do in order to have the board approve the application. Mr. Pounds said that he would have to get the community in support of his proposal. He added that he was impressed with the time and work that Mr. Hines had devoted to the presentation and also commended him for changing over to electric go karts; however, Mr. Pounds said that he just does not feel that this will be a good location for this proposed business. Mr. Krieb said that he also had reservations about the go kart track being located at this site and he wanted to know if Mr. Hines had given any thought to any other type business that he could open there. Mr. Hines stated that he is targeting the younger generation and he wanted to open with a go kart business first then later on expand with indoor arcade games and virtual simulators. Mr. Krieb asked Mr. Hines if he would be willing to give up the go kart idea and go to one of his other ideas. Mr. Hines said no, he thinks the go kart business will be the draw over all the other entertainment available.

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

Mr. Seiber said that he would like to make a comment pertaining to the statement that Mr. Shell had made saying that Mr. Hines was falsifying his testimony when he said that there was no other place in town to operate this business. Mr. Seiber said that might have been a misinterpretation of words and that he did not believe that Mr. Hines meant that there were no other places in town. He thought that Mr. Hines meant that he couldn't find another place.

Justin Pounds made a motion to deny the conditional use permit application at 800 Chestnut Street to operate a go kart track requested by Quentin Hines based on the fact that it is unattractive to the neighborhood and that it would have a negative potential impact on the surrounding property values. Scott Seiber seconded the motion and the motion carried with a 6-0 voice vote.

Review of Conditional Use Permit: 1108 Elm Street - Dennis Crawford: Ms. Dowdy stated that Dennis and Jean Crawford, owners of the property, were granted a Conditional Use Permit for up to four non-related persons to occupy the premises at 1108 Elm Street. Mr. and Mrs. Crawford reside in the house next door at 1106 Elm Street. Ms. Dowdy said that the Crawfords had purchased the home to make improvements and once they complete the project, they plan to sell the house to a family. During the improvement time, Mr. Crawford applied for a conditional use permit in order to rent the property out. Ms. Dowdy used a Power Point presentation to show the updates and improvements that the Crawfords have made to the house and property during the past year. The Conditional Use Permit was previously approved in March of 2010 and was

Murray Board of Zoning Adjustments Regular Meeting
Wednesday, April 20, 2011

requested by the BZA that this conditional use permit be reviewed in one year. Ms. Dowdy stated that conditional use permit had slipped the Planning Staff's attention and Mr. Crawford had called the office and asked to be put on the agenda for review. Ms. Dowdy stated that Mr. Crawford was not in attendance. She stated that Planning Staff had received no complaints since the Crawfords had rented the property; therefore, she told him his appearance would not be necessary.

Scott Seiber made a motion to allow the continuation of the conditional use permit that was granted to Dennis and Jean Crawford for the property located at 1108 Elm Street for up to four non-related persons to occupy the premises as long as the Crawford's continue to own the property and that all other conditions placed on the permit remain in force. Mary Ann Medlock seconded the motion and the motion carried with a 6-0 voice vote.

Questions and Comments: None.

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 7:07 p.m.*

Chairman, Bill Whitaker

Recording Secretary, Reta Gray