

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, OCTOBER 19, 2011
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, October 19, 2011 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5th Street.

Board Members Present: Scott Seiber, Bill Whitaker, Brad Darnall, Mary Anne Medlock and Steven Reed

Board Members Absent: Justin Pounds and John Krieb

Also Present: Candace Dowdy, Justin Crice, David Roberts, Reta Gray, Hawkins Teague, Don Riley, Chuck Foster, Dr. Terry Strieter, Danielle Kidwell, Anna Walters, Kelsey Machens, Alyssa Burks, Vicky Dunlap, Adam Horton, Ryan Stewart and public audience

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 September 21, 2011 regular meeting.

Scott Seiber made a motion to accept the minutes from the September 21, 2011 Board of Zoning Adjustments regular meeting as corrected. Mary Anne Medlock seconded the motion and the motion carried unanimously.

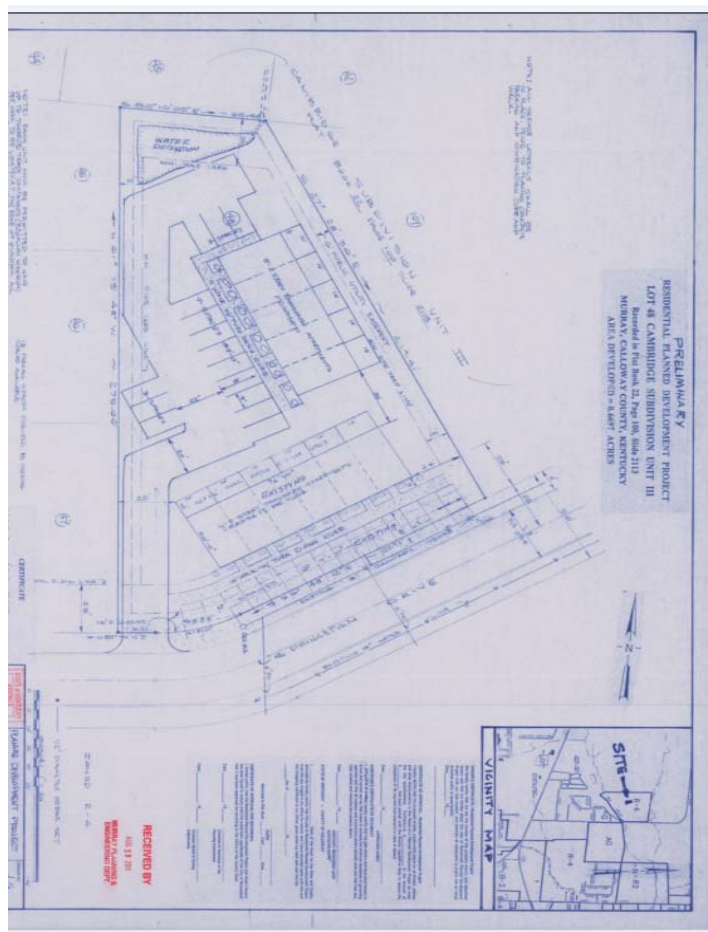
Chairman Whitaker welcomed Justin Crice. Justin is the new Planner I.

Compatibility hearing for proposed residential planned development project at lot 48 Cambridge Subdivision Unit III – Daniel Yong: Candace Dowdy used a Power Point presentation to show Lot 48 in Cambridge Subdivision, Unit III (50, 52, 56, 58, 60 & 64 Princeton Drive) where Daniel Yong is proposing a Residential Planned Development Project. The property is located in an R-4 (Multi-Family Residential) zone and it is surrounded by property in the county and Agricultural zoned city property to the southeast. There is currently one building with six units on the property. This is the only lot that went through a PDP process. The lot consists of 0.6697 acres (29,172 sq. ft.) and Mr. Yong would like to construct another building with five additional units on the property. Based on the lot size requirements in an R-4 zoning district the lot could accommodate another five units. The addition of another five units would require 15 more parking spaces. Stormwater detention will be required for this project if approved. The site plan has been reviewed by the Sanitation Department and requirements for curbside pickup will be met. The developer will be required to submit a landscape plan. The original PDP required 18 parking spaces but the project was approved with 16 parking spaces. If the proposed addition is approved one of the existing parking spaces would have to be eliminated in order to construct the driveway access to the back of the property. This project went before the Planning Commission on the previous night for an advisory where they discussed stormwater detention and additional parking. The main concern that the Commissioners had was that there was not another means of egress from the property; therefore, they asked Mr. Yong to go back to

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the drawing board with V.L. Associates and see if the project could be reconfigured in order to have an additional entrance/exit. Ms. Dowdy stated that since the Planning Commission meeting she had had Fire Marshal Dickie Walls look at the plat and he indicated that there would need to be a turnaround or a cul-de-sac added since the access to the back building exceeded 150 feet from a public street; thus, as the current plat exists, it is not workable. Ms. Dowdy said that if one or two parking spaces were eliminated on the north side of the property there would be room for a second means of egress. She added that she had spoken to Mr. Yong prior to the meeting and made him aware of the situation. Ms. Dowdy said that Mr. Yong has up to 60 days in order to submit a new site plan. Ms. Dowdy reminded the board members that they were simply reviewing the project for compatibility.

Daniel Yong, 20 Scarlett Drive, Murray was sworn in. Chairman Whitaker explained to Mr. Yong that there were numerous changes that he and his architect would have to work on before he could move forward with the project. Mr. Yong replied that his architect will take all of the things into consideration and make changes accordingly. Mr. Yong added that he is responsible for extending the sewer to the project; therefore, with large added expenses such as this, the project may not move forward if the overall costs are not economically feasible.



Scott Seiber made a motion to approve the compatibility of the project and to allow it to move forward after the changes are made to the site plan. Brad Darnall seconded the motion and the motion carried with a 5-0 voice vote.

Public hearing to review conditional use permit for Arby's Planned Development Project located at 307 & 309 North 12th Street – Rajiv Johar: Candace Dowdy used a Power Point presentation to show the property at 307 and 309 North 12th Street where the owner, Rajiv Johar, is proposing to construct a new Arby's Restaurant. The property is located in a B-4 zoning (Medium Density Business) district where there is B-4 zoning to the north, south and east and R-3 (Multi-family) zoning to the west. The Planning Department has reviewed and approved a minor subdivision plat consolidating these two lots into one tract of land which consists of 0.651 acres. A restaurant may be allowed as a conditional use and reviewed through the PDP process. An Advisory Meeting and Compatibility Hearing were held before the Planning Commission and the Board of Zoning Adjustments in July of this year. At the Advisory Meeting Mr. Chuck Foster, representative for Mr. Johar stated that the proposed design for the restaurant would require a half acre of land. They presented two mid-block designs with a stucco/dryvit finish that would accommodate this site. The Planning Commission suggested that Mr. Johar come back with a design that would blend with the surrounding neighborhood and landscape. The applicant is now proposing that the exterior of the building be brick. There were also concerns with the screening that would be provided along the west property line adjoining the residential zoning district and the amount of green space for this project. It was noted that the entrance and exit locations for the project should be looked at carefully because this is a busy location. Planning Staff noted that there are currently three entrances to this property and that alterations to the existing entrances are being coordinated with the KYTC. The applicants have received approval from the state on the proposed changes to the entrances. The BZA previously reviewed the project for compatibility. The current site plan shows both a left and a right turning lane at the exit to 12th Street. Ms. Dowdy stated that the Planning Commission approved the Preliminary Plat at the meeting the previous night; however, the Commissioners voted to do away with the access to University Square because of the nature of congestion on North 12th Street. Demolition has begun on the site. The total square footage of the proposed building is 2133 square feet. The project is meeting all building setbacks and parking requirements. The total parking requirements based on gross floor area is 26 parking spaces and that will be provided. There are currently sidewalks along the front of this property on 12th Street. The dumpster area has been approved by the Sanitation Department. The site plan shows a six foot white vinyl fence along the west property line that will provide the necessary screening adjacent to the residential zoning district. Kim Oatman, Civil Engineer for the project, is preparing the preliminary plans for the design of the stormwater detention. The applicants are requesting a couple of dimensional variances on the signage for Arby's during this process. Their site plan is showing two directional signs at the entrance and two at the exit. All other signage will meet city regulations. Ms. Dowdy stated that based on the dimensions of the front of the building, they are allowed one 36 square foot wall sign. They have decided to use 36 inch channel letters to go on each front corner of the building. The square footage for each sign is 21 square feet; therefore, they will be asking for approval for an additional 21 square foot wall sign. Ms.

Dowdy explained that a typical prototype Arby's has signs on each front corner of the building with a lighted logo sign that is centered on the front (inside) of the building. The proposed monument sign's overall square footage meets city regulations; however, they are asking for a seven foot front setback variance on the monument sign to locate it three feet off the front property line.

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

Don Riley, 1586 Bell Meade Boulevard, Mayfield, KY was sworn in. Mr. Riley is the Architect for the Arby's project. Mr. Riley read an opening statement that reiterated the previous statements from Ms. Dowdy. He added that the model that Arby's is proposing is the A42SL which is 2,133 square feet with a seating capacity of 42. It will have a three colored brick veneer exterior with matching mortar. The detention area will be located on the southwest corner of the property. Mr. Riley said that the typical drainage pond will not be adequate; therefore, they will be proposing an additional underground pipe system. Mr. Riley stated that Arby's does not normally build this particular design with a brick veneer; however, they have agreed to replace the stucco with brick for this model to make it more attractive as well as a good fit for the neighborhood. He said that they have also decided to leave off the north and south signs that are typical on the building to also make it more appealing. Mr. Riley said that Arby's strives for the balanced look; thus, the matching signs on either side of the front window. Chairman Whitaker asked Mr. Riley what Arby's corporate desires were for the drive-thru window. Mr. Riley stated that Arby's corporate goal for the drive thru is to be able to stack 12 cars around the drive thru lane up to the right of way.

Chuck Foster, 1614 The Lane, Murray was sworn in. Mr. Foster is the attorney representing Arby's. Mr. Foster stated that it was a difficult decision for the Planning Commissioners in deciding whether to close off the access to University Square with a vote of 4-3. Mr. Foster said that Arby's had not considered the access until they were approached by the adjoining property owner to connect the adjoining businesses. He added that it is hard to speculate what is best considering the traffic flow to 12th Street; however, they are willing to put the access in or leave it out. Mr. Foster said that if the access is left out, they will fill in that area with green space with low lying plants in order to preserve the good visibility on both the north and south sides.

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

Dr. Terry Strieter, 202 North 13th Street, Murray was sworn in. Dr. Strieter stated that he is one of the three co-owners of Fidalgo Bay. He stated that they object to both the monument sign variance as well as the additional wall sign. He said that he understands the architect's vision for symmetry; however, he said that Arby's has already made the requested changes to the outside of their building. Dr. Strieter stated that he is very pleased with the proposed changes and he is in hope that the architect can come up with some way to center only one sign on the front of the building. When Fidalgo Bay was being built, Dr. Strieter said they stayed within the regulations and didn't ask for any variances. They hoped that Arby's would do the same. The proposed

location of the monument sign is more of an issue to the owners of Fidalgo Bay. St. Leo's Catholic Church and Fidalgo Bay's signs are within regulation and Dr. Strieter added that if Arby's is allowed to move their sign forward, it is not living up to the rules and regulations established in Murray and it can be an obstruction. He said that if you are going to have regulations, then he thinks that everyone should go by them and not have a bunch of variances.

Chairman Whitaker asked if there was any rebuttal.

Don Riley said that the ordinance states that there will have to be a certain amount of flexibility. He added that in every other instance, they have met all of the requirements and requests. They feel like the variances that they are requesting are minor and justifiable and would fall under the flexibility clause.

Chairman Whitaker closed the public hearing and turned it over to the Board for discussion.

Ms. Medlock said that even though the middle lighted logo on the building is not hanging on the outside of the building, it is still a sign. She stated that she would like to see one larger sign centered on the outside of the building versus three smaller ones (the two that Arby's are proposing on the front corners in addition to the one in the middle). Ms. Dowdy said that any business is allowed to have one wall sign and if they are located on a corner lot, they would be allowed one extra wall sign. With the proposal that Arby's has presented, they will be over their allowed square footage by 6 square feet (for the two signs). Scott Seiber agreed with Ms. Medlock in that he would like to see Arby's have one bigger and better sign located in the center of the building. He added that he did not think a setback variance on the monument sign would present any visibility issues because of the small size of the monument sign. After much discussion, the board called Mr. Riley back to answer some questions. Mr. Seiber asked Mr. Riley if it was possible to put one big sign in the center front of the building as opposed to the two smaller ones on either side. Mr. Riley stated that he could not speak for the client; however, as an architect, it is possible and he didn't mind doing that as an option. Mr. Seiber asked Mr. Riley if he could communicate to Arby's Corporate that the BZA will allow one sign on the front of the building which can either be centered or placed on either side near the corner. Mary Anne Medlock thanked Mr. Riley for being accommodating in their suggestions. Mr. Riley stated that when his name is on something, he wants it to look good.

Scott Seiber made a motion to approve the Conditional Use Permit application for Arby's Restaurant Planned Development Project at 307/309 North 12th Street contingent upon final plat approval by the Murray Planning Commission and the development meeting all city regulations including lighting requirements. He also moved to approve the seven foot front setback variance on the monument sign and to deny the addition of one wall sign. Arby's is allowed one sign on the front of the building. It can be placed on either side in the front corners or centered on the building. This decision was made in order to avoid getting in the habit of granting variances on additional wall signage. Mary Anne Medlock seconded the motion and the motion carried with a 5-0 voice vote. Brad Darnall left the meeting at 6:03 p.m.

Public hearing to review a conditional use permit application for four non-related persons to occupy the premises at 1655 Ryan Avenue – Alyssa Burks, Danielle Kidwell, Anna Walters and Kelsey Machens: Candace Dowdy used a Power Point presentation to show the property located at 1655 Ryan Avenue where 4 non-related persons occupy the residence. Bob Bradley owns the property and his son Chris Bradley manages it. Ms. Dowdy stated that she had mailed copies of letters and complaints to the board members that had previously been made regarding the use of the property. Numerous complaints and correspondence have taken place with the owner of the property since the original complaint was filed on April 1, 2009 in reference to the property being used as multi-family. On September 1, 2011 a letter was sent to the homeowner regarding the use of the property once again. On September 7, 2011 Chris Bradley contacted the Planning Department stating that he had a lease to own agreement with Kelsey Machens and that he didn't know if there were other girls living there or not. Ms. Dowdy stated that she had asked him to follow up with this and get a copy of the lease to the Planning Department. As of September 14, 2011 Planning Staff had not been contacted by Chris Bradley so another letter was sent to Bob Bradley with a copy to his son Chris. Chris Bradley contacted the Planning office within five days from the date of the letter to see what he needed to do. Ms. Dowdy stated that she had explained to him that he had to bring the property into compliance immediately or apply for a conditional use permit. Mr. Bob Bradley gave written permission to the four girls (Danielle Kidwell, Anna Walters, Kelsey Machens and Alyssa Burks) living at 1655 Ryan Avenue to apply for a conditional use permit. The girls would like approval from the Board to remain at this location until they graduate in May 2012. The property (with a single car driveway) is located in an R-2 zone (Single Family Residential). Adjoining properties are zoned R-2 except for the property to the southeast which is zoned R-4. Ms. Dowdy presented pictures that were taken of the property the previous day. There were automobiles parked in the yard at the time of the picture. Ms. Dowdy also showed other pictures that had been sent to her from adjoining property owners showing cars parked at various spots on the property. All adjoining property owners were notified. Ms. Dowdy added that if the board should approve this conditional use application, that information will be recorded on the deed to the property for future reference along with any conditions that are placed on it. Mr. Seiber asked if Ms. Dowdy was aware of any other multi-family uses that were going on in that particular R-2 zoned district. Ms. Dowdy stated that there were no approved applications for multi-family use in the area at the current time and that she was not aware of any others.

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

Alyssa Burks, 1655 Ryan Avenue, Murray was sworn in. Ms. Burks stated that she and Kelsey Machens have lived in the four bedroom house since July of 2010 and have never received any prior complaints. Ms. Burks stated that four girls had occupied the home during the 2010 school year and there are four girls currently living there. Two of the current tenants moved in during July of 2011. Those two girls are Danielle Kidwell and Anna Walters. Each of the four girls is on the MSU Rodeo Team. Ms. Burks said that Chris Bradley was well aware that there were four girls living there because each of the girls signed separate leases and that none of the girls

have a lease to own. Each of the tenants will be leaving Murray upon graduation in May of 2012. The girls were never informed by their landlord that they were living in a family zoned district and were never made aware of any complaints since they have been there. They also did not know they could not park in their yard or along the street, but that they were supposed to park in certain areas. Ms. Burks said that recently a policeman visited their home and they asked him about the parking situation. The policeman told them that as long as their landlord was ok with it, that it was not a problem; however, he did inform them that they had to be off the street. Ms. Dowdy stated that Planning and Zoning actually enforces parking in multi-family housing. She said that the landlords are required to have enough off street parking for the amount of tenants that are there. Ms. Burks stated that they had made many improvements to the property since they have lived there and they always try to keep it well maintained. She added that they do not ever park on the street or have parties and they do not keep late hours. Ms. Burks stated that during the summer of 2011 when the girls went home for summer break, they allowed a friend to live there to keep the place up in their absence. They were upset to find out when they came back to Murray for the 2011 fall semester that the girl they had living there did not mow the yard the entire summer. Ms. Burks revealed to Ms. Dowdy that there are a lot of other college students living in the area that could possibly be in violation of the ordinance. Ms. Burks said that they would like to remain living there until they graduate in May 2012. Pictures were shown of the yard of the residence with various cars in the yard and when asked who the cars belonged to, Ms. Burks said the girls that lived there each owned a truck and that the other vehicles in the photos belonged to friends.

Anna Walters, 1655 Ryan Avenue, Murray was sworn in. Ms. Walters said that she had re-read her lease and there is no mention of the zoning of the property and if she had known about the situation, she would have not moved in there because she does not want to cause any problems within the neighborhood. Ms. Walters stated that the tenants are willing to widen the driveway if that is needed so that they can all park there. Each of the girls drives a long wheel base pick-up truck and they need their trucks to pull horse trailers on the weekends when they go to rodeos. She asked the board to find a solution where they could remain there until they graduate in May of 2012. She added that they will comply with whatever the board says. They are even willing to park their vehicles in the MSU commuter lots to keep the parking situation under control at their residence. Ms. Walters concluded that they are sorry for what has happened, but they were not made aware of the zoning laws before they signed their leases. Ms. Medlock told the tenants that whatever was decided by the board would be against the homeowner for not being in compliance and not against the girls.

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

Vicky Dunlap, 1656 Ryan Avenue, Murray was sworn in. Ms. Dunlap stated that she brought a petition with signatures from the neighborhood as well as additional pictures that she had taken of cars parked up and down the street in front of her house. (The petition and pictures were shown.) *Petition and pictures were entered as Exhibit A & B.* Chairman Whitaker asked if the signatures that Ms. Dunlap received belonged to homeowners or renters of the properties. Ms. Dunlap stated that as far as she knew, they were property owners. Ms. Dunlap has lived at 1656

Ryan for four years and she also had issues with the previous tenants. She added that there has always been a problem with cars parked in the yard including cars blocking her driveway. Ms. Dunlap said that she called the City to report that the yard had not been mowed for a month this summer. The previous tenants had trash in the driveway constantly; therefore, they couldn't use their own driveway because of the trash. She stated that she had been in contact with Chris Bradley numerous times concerning issues with the previous tenants before he finally evicted them. Ms. Dunlap said that there is a lot of traffic in and out of the girl's house and she had left notes on windshields numerous times requesting that they not park blocking her driveway. The notes have not accomplished anything. Ms. Dunlap said that bus drivers have even complained about the cars parked on Ryan Avenue. She said there are people that walk on that street and it is a dangerous situation. Ms. Dunlap chose her home at this location because it was in an R-2 zoned (Single Family) district and now with the current situation, her property value has been affected. She concluded that she is there to protect her investment. She does not like to be in the middle of this problem and would like for it to be resolved. Ms. Dunlap said that Bob Bradley knows better than to use this particular rental property as multi-family.

Adam Horton, 1654 Ryan Avenue, Murray was sworn in. Mr. Horton rents and lives directly across the street from the Bradley rental property. He moved in during June of 2011. Mr. Horton, his wife and child moved to this house from a house in the country. They chose this property because it was listed as a single family home residence. When he moved in, MSU was out for the summer and there were no problems. Once school started this fall, it has been a constant problem with multiple vehicles parked at the two residences across the street from him with vehicles coming and going all the time. He added that the vehicles are parked in the yard, in the street and even at the edge of his driveway where he can't back out without the fear of hitting one of them. When Mr. Horton first discovered there was a problem, he spoke to his neighbor, Ms. Dunlap, and she told him that she had been constantly trying to reach Bob Bradley about the situation. He saw that obviously that wasn't working, so he called Ms. Dowdy to voice his concerns. Ms. Dowdy gave him directions to resolving this matter. Chairman Whitaker asked if there were any problems other than parking. Mr. Horton said that parking was the main issue.

Ryan Stewart, 1715 Ryan Avenue, Murray was sworn in. Mr. Stewart said that throughout the meeting he has heard the board grant exceptions to the rules by allowing variances; therefore, setting precedence. He added that there are several homes in the R-2 neighborhood that are not occupied by single families. Mr. Stewart stated that he had just purchased his home on a 30 year investment. He said that he will have to be diligent and monitor the neighborhood and collect evidence to protect his property value. Mr. Stewart said that if the board allows the college students to move in with conditional use permits; then it would be subject to continuing this with each request after that. Mr. Stewart stated that it was interesting that Mr. Bradley didn't show up for the meeting, because Mr. Bradley knew he was wrong. He continued that Mr. Bradley has a lot of rentals and he knows the zoning in the town; therefore, has put his four tenants in a bad position. Mr. Stewart concluded that this decision will set precedence and he asked the board to keep that in consideration.

Chairman Whitaker asked if there was any rebuttal.

Alyssa Burks said that she understands the connection between the situation at hand and the decrease in property values that it could cause. Ms. Burks agreed that Mr. Bradley should have been present at the meeting to defend this issue. She said that they would not have moved in if they had known about this situation; however, she would like for the board to consider letting them live there until May of 2012.

Vicky Dunlap stated that she wanted to reiterate what Mr. Stewart had said and that this could set precedence towards the future of Ryan Avenue.

Chairman Whitaker closed the public hearing and turned it over to the board for discussion.

Mary Anne Medlock made a motion to deny the request for a conditional use permit at 1655 Ryan Avenue to allow four (4) non-related persons to occupy the premises in an R-2 (Single Family Residential) zoning district. The residents should move out by December 31, 2011. That date is based on what the board has ruled in the past on similar requests. Steven Reed seconded the motion and the motion carried with a 4-0 voice vote.

Election of officers: Chairman Whitaker stated that his term as Chairman would be over in October of 2012 and at that time he would also resign from the board. Ms. Dowdy asked if Chairman Whitaker would be willing to stay on as Chairman another year and he said that he would.

Mary Anne Medlock made a motion to accept the current slate of officers for 2012. The current officers are: Chairman-Bill Whitaker; Vice-Chairman-Scott Seiber and Secretary-Justin Pounds. Steven Reed seconded the motion and the motion carried unanimously.

Questions and Comments: None

Adjournment: Scott Seiber made a motion to adjourn. Mary Anne Medlock seconded the motion and the motion carried with a unanimous vote. *The meeting adjourned at 7:10 p.m.*

Chairman, Scott Seiber

Recording Secretary, Reta Gray