

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, NOVEMBER 16, 2011
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, November 16, 2011 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5th Street.

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

Board Members Absent: Brad Darnall

Also Present: Candace Dowdy, Justin Crice, David Roberts, Mike Pitman, Reta Gray, Hawkins Teague, Sam Underwood, Tim Walker, Tung Dinh, Tammy Rogers, Barbara Cobb, Mayor Wells, Matt Mattingly, 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 October 19, 2011 regular meeting. *Justin Pounds entered the meeting at 4:36 p.m.*

Scott Seiber made a motion to accept the minutes from the October 19, 2011 Board of Zoning Adjustments regular meeting as corrected. Steven Reed seconded the motion and motion carried unanimously.

Compatibility Hearing for Proposed Commercial Planned Development Project At 806 Whitnell Drive – Sam Underwood: Candace Dowdy used a Power Point presentation to show the property at 806 Whitnell Drive where Sam Underwood (owner of the property) is proposing to construct a Commercial Planned Development Project (storage buildings). Because this property is located in a B-1 (Neighborhood Business District) zone the project will be reviewed as a PDP which is allowed as a conditional use. The property is surrounded by B-2 zoning to the east, B-1 zoning to the north and south and R-2 zoning to the west. The total acreage for the lot is 0.580 acres. A minor subdivision plat was recently approved by Planning Staff realigning Mr. Underwood's property along Whitnell Street on the 800 block. The applicant is proposing to construct two buildings on the property; one that is 9450 square feet and one that is 1500 square feet. The larger building will contain 50 climate controlled storage units and the smaller building will have four (4) large outdoor storage units. Mr. Underwood will be using one of those units for himself to store equipment in that he uses for maintenance on his properties. Ms. Dowdy stated that the Planning Commission had reviewed this project the previous night through an advisory meeting and they voted to forward the project on to the BZA for compatibility. Mr. Underwood will be looking at a front and a rear building setback variance along with a variance for one additional entrance into the property. Ms. Dowdy stated the building that adjoins the property to the south is a daycare with parking spaces on the north, east and south sides. Mr. Underwood has plans to use one of the same entrances for the storage units that he uses for the daycare; therefore, Planning Staff required Mr. Underwood to put a permanent access easement

on the minor plat for that entrance. Ms. Dowdy said that the Planning Commission noted that they would like to see some parking spaces striped in order to maintain some order to the property. Some of the issues that are typically addressed during the PDP process will be setback variances, storm water detention, parking and sign variances.

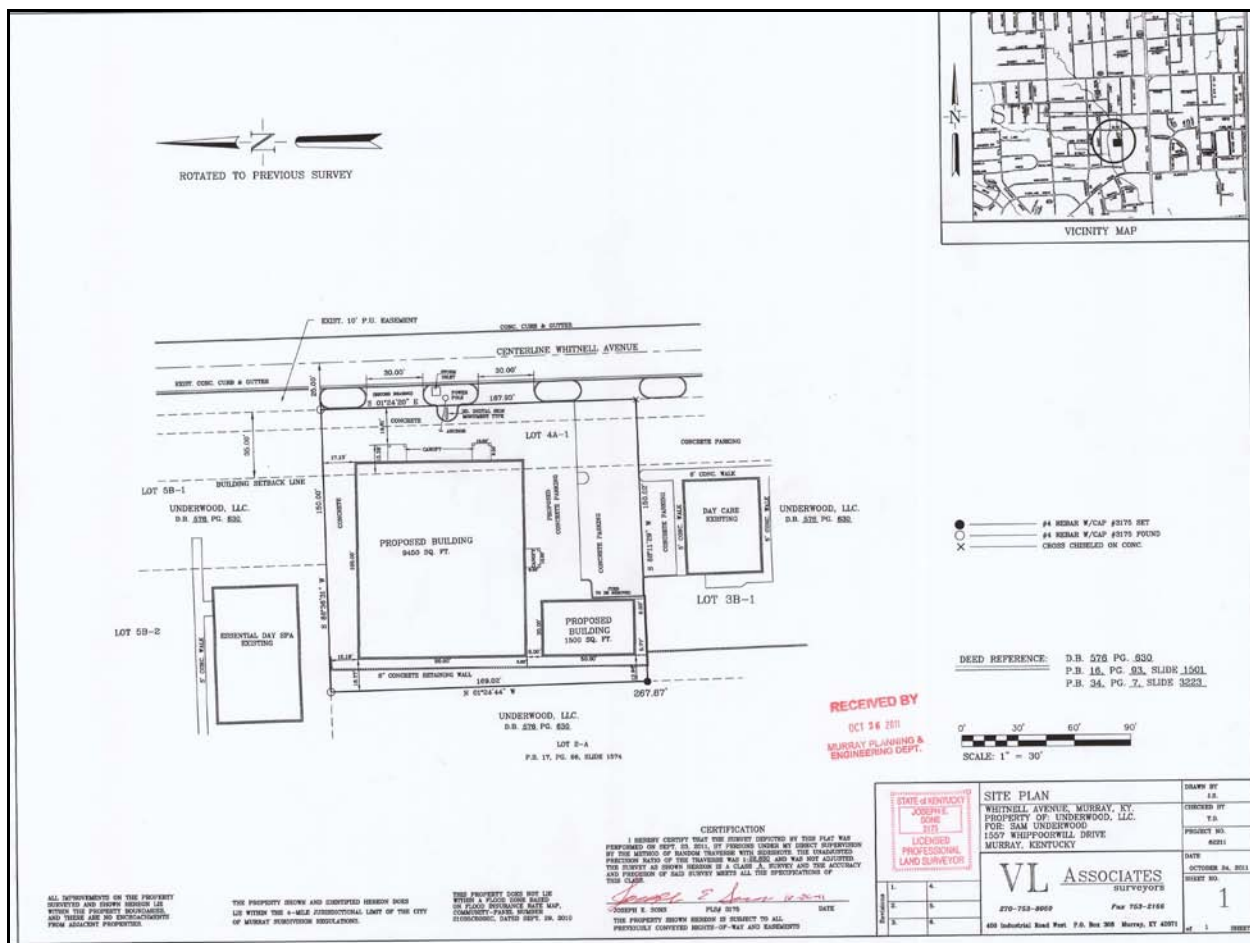
The retaining wall that currently exists at the back of the property will be continued 75 feet towards Whitnell. Ms. Dowdy stated that Mr. Underwood had requested a monument style sign with an electronic reader board but the electronic reader boards are not permitted in a B-1 district. Mr. Underwood had originally planned to concrete the entire lot before the Planning Commission suggested that he add some green space on the north side of the property. Mr. Underwood stated that he is open to adding green space and trees on the north side of the project. Lighting was also brought up at the Planning Commission meeting and Mr. Underwood informed the Commissioners that he would have adequate lighting on all four sides of the buildings to ensure safety. Mr. Underwood had also indicated that each tenant would have access to their storage facility 24 hours a day and they would have their own code in order to access the building. Mr. Underwood has already addressed stormwater detention by installing an underground drainage system when he initially built the other storage buildings on the lots nearby. The proposed buildings will be brick on three sides and metal on the back side. If Mr. Underwood has a dumpster, the Sanitation Department will review the site plan to make sure city regulations are being met. Ms. Medlock wanted to reiterate the subject of the parking that had been discussed at the Planning Commission meeting. She stated that she also would like to see a few striped parking places in order to create more organization even though there would be approximately 60 feet between the main building and the daycare. Ms. Medlock added that since there were no other monument signs in the area; she thought that a wall sign would be more compatible in that area.

Sam Underwood, 1557 Whippoorwill Drive, Murray was sworn in. Mr. Underwood explained that he is personally going to use the proposed building that will be next to the daycare for his tractor and backhoe; therefore, there will not be anyone else coming or going from that area. That should allow trucks to enter and exit through the area without any problems. Mr. Underwood owns other rental properties and he stated that he has had issues with tenants using parking spaces indefinitely and that could potentially be an issue when adding extra parking spaces. Automobiles have been left for days unattended. Mr. Underwood said that if there were cars in marked parking spaces and a large truck came in to the storage units, it would not be able to maneuver in the parking lot with ease. Mr. Underwood added that he could stripe a couple of parking spaces along the south side, but not 8 or 10 as he thinks that situation could present a problem. Mr. Underwood stated that he would like to have a nice digital sign to show the availability of his rentals; however, he realizes that at this time the ordinance would not permit that. He said that he hoped that revisions to the ordinance will allow this sometime in the future. According to Murray Electric, there is a post and a guide wire that are located on the front of the property that cannot be removed. Mr. Underwood said that he plans to put curbs around the guide wire to keep people from backing into it and place a monument sign next to the guide wire. Chairman Whitaker asked Mr. Underwood how he decided on a size for the building. Mr. Underwood stated that he currently owns other storage units and from experience with these he had drawn up for the size of the units and the hallways. The dimensions are proposals and he

can modify them somewhat if he is required to; however, the more units he has there, the more financially feasible it will be for him. Mr. Underwood stated that he needed the three entrances that he is showing on the plan for the pull-through effect as well as convenience. Ms. Medlock asked the height of the storage buildings and Mr. Underwood said they would be very similar to the other storage buildings that are located directly to the south.

Chairman Whitaker asked if there was anyone else that wished to speak concerning the proposal. There was no one.

Scott Seiber made a motion to approve this project for compatibility. John Krieb seconded the motion and the motion carried with a 6-0 voice vote.



Public Hearing to Review Dimensional Variance Request for Additional Wall Signage at 1414 Hwy 121 Bypass North – AT & T: Candace Dowdy used a Power Point presentation to show the property at 1414 Hwy 121 Bypass North that is leased by AT & T where they are currently in the process constructing their new building. The property is zoned B-2 (Highway Business) and is surrounded by B-2 to the North, East and West and G (Government) from Murray State property to the South. Ms. Dowdy stated that Murray Max, LLC and Priority Sign Inc. have submitted a dimensional variance request for an additional wall sign on the west side of the new AT&T store (West side of building is 60 feet x 19 feet). Since the building faces Hwy

121 and is located over 100 feet from the highway they are allowed 5% additional signage for the front of the building (60 feet x 22.7 feet). The overall total of 135 square feet of wall signage is allowable on the front side and they will only be using a 49.20 square foot sign there. The building is on an interior lot with no road frontage. Murray State Foundation owns the lot in front of the AT&T store and there is also a lot on the west side of the AT&T store that is on the corner of Lowes Drive and Paramount Drive that could potentially have a building on it that would obstruct the view of their building. The proposed sign for the west side of the building is also 49.20 square feet with the AT&T sphere logo as well as a letter set alongside it. Ms. Dowdy clarified that they will still be falling within their allowable square footage for wall signage even with the additional wall sign on the west side of the building. *Mayor Wells entered the meeting at 5:30 p.m.*

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

Tim Walker, 625 Alamo Road, Calvert City, Kentucky was sworn in. Mr. Walker, representative of Signco, was contracted as the installer of the sign by AT&T. Mr. Walker confirmed that they are asking for a variance for the wall sign for the west side of the building. He added that they already have the sign permit for the sign on the front of the building as well as for the monument sign. Mr. Walker stated that he is assuming that the request is for a sign on the west side only because Ryan's Steak House would block anything that would be put on the east side of the building. He added that if something should be built on the west side of the AT&T building, it might potentially block the signage that they are requesting to install; however, at this time it would be visible. Ms. Medlock asked if Mr. Walker was going to be constructing the monument sign and he stated that he was. Mr. Walker showed a picture of the proposed monument sign which will be 7 foot 4 inches in height and 8 foot 5 inches in width.

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 the Dimensional Variance application for AT&T for one additional wall sign on the west side of the building not to exceed 49.20 square feet. This variance is based on the fact that the lot is an interior lot and has no road frontage. 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 nuisance to the public and will not allow unreasonable circumvention of the requirements of the zoning regulations. Scott Seiber seconded the motion and the motion carried with a 4-2 voice vote. Mary Anne Medlock and Steven Reed voted no.

Public Hearing to Review Conditional Use Permit for The Night Owl – 1413 Olive Boulevard – Tung Dinh: Candace Dowdy used a Power Point presentation to show the property at 1413 Olive Boulevard where Tung Dinh opened *The Night Owl* (coffee bar and recreational facility) in a B-1 zone. Ms. Dowdy stated that the hearing is to review the compliance of conditions placed on the Conditional Use Permit that Mr. Tung Dinh was granted

in September 2010. At the BZA meeting staff presented information that Mr. Dinh was looking to renovate his 3600 square foot building for a coffee shop, internet café, and entertainment center which would include games such as pool, shuffle board, etc. The purpose behind the business was to attract college students between classes. The hours of operation would be from 7:00 a.m. to 12:00 a.m. Mr. Dinh was also requesting a parking variance since the parking requirements for this type of business were based on the maximum seating capacity and would require 43 parking spaces and he could only provide seven (7) spaces. During the public hearing Mr. Dinh stated that he wanted a hang out place for Murray State students where they could play pool, shuffleboard, and Wii and that he wanted to provide music at night. Mr. Dinh also stated that his facility would be a non-alcoholic and smoke free facility. Prior to Mr. Dinh opening his business (*The Night Owl*), on April 5, 2011, staff found out that a portion of the building was going to be used as a hookah lounge which requires specific fire retardant furniture that must meet fire codes. Dickie Walls, Fire Marshall informed Mr. Dinh of the appropriate fire codes required for this type of use. Staff was also informed by Dickie Walls that the occupant load for the entire building was 165 persons based on the number of exits and that the area Mr. Dinh wanted to use as a dance floor would have to be reduced to 380 square feet otherwise the occupant load would be much greater and the building would have to be sprinkled with fire alarms and additional exits. In walking through the building prior to opening, Planning Staff was told by Mr. Dinh that the front portion of the building (coming in from Olive Blvd.) was the coffee shop and the back part of the building would serve many purposes during the day such as an area to play pool, use the internet, study, take zumba classes and a Hookah Lounge at night. Mr. Dinh indicated that at night the back part of the building would be for anyone 18 years of age and older and that someone would be at the door to check drivers licenses or student ID's to make sure no one under age was allowed beyond the coffee shop area since there would be music and dancing as well as hookah smoking. Mr. Dinh indicated to staff that he would like to keep his business open on Friday and Saturday nights until 2:00 a.m. and that all other nights would be midnight. Planning staff had previously suggested that he not stay open past midnight until the board reviewed the matter in May. Based on the article from the Murray State News, Mr. Dinh's business was to be open until 2:00 a.m. on Thursday, Friday, and Saturday nights. In May when the CUP was reviewed, Mr. Dinh's establishment had not been opened long enough to see whether there were going to be any issues of concern; thus, another six months review date was set. Ms. Dowdy stated that adjoining property owners were contacted before the meeting. Ms. Dowdy said that she had spoken to Mr. Dinh before the meeting to see the status of his operation and Mr. Dinh had revealed that his hours are now 8 a.m. through 3 p.m., closed from 3:00 p.m. until 8:00 p.m., and then he re-opens his business until 2:00 a.m. Mr. Dinh's type of operation has changed since May. He informed Ms. Dowdy that having a D.J. and dancing has not worked out; therefore, he only has a D.J. on special occasions or for a private party. Mr. Dinh has a sign posted that no one under 18 is allowed in the hookah lounge and he has someone there checking ID's to enforce that. There is a snack area where pre-made sandwiches are served. Nothing is prepared at the location except for smoothies. There are pool tables and other game machines located in the center. Ms. Dowdy stated that there have not been any reports of disturbances or complaints made to the police nor have there been any situations with the parking. She added that Tammy Rogers owns Shear Lunacy that adjoins Mr. Dinh's establishment and she has an upstairs apartment that she rents out. Ms. Dowdy said the goal is to protect the integrity of the residential district that is near this property.

Chairman Whitaker opened the public hearing and asked if there was anyone that wished to speak in support of the conditional use permit.

Tung Dinh, 809 Coldwater Road, Murray was sworn in. Mr. Dinh stated that he agreed with everything that Ms. Dowdy had said. He added that after May's meeting he decided against having a D.J. on a frequent basis; in fact, he has only had two D.J.'s since then. One was to welcome the students back to school and one was for a private party. He plays Pandora Radio through the internet instead and typically there is no one dancing. Mr. Dinh said that he has a coffee bar, game room and hookah lounge. Mr. Dinh added that he is within the occupancy limits that the fire marshal placed on the building. Mr. Dinh has an employee that picks up the trash outside the building every night in order to keep a good relationship with Murray State.

Chairman Whitaker asked if there was anyone that wished to speak in opposition to the conditional use permit.

Tammy Rogers, 273 Pottertown Road, Murray was sworn in. Ms. Rogers is the owner of Shear Lunacy which is located next door to Mr. Dinh's business. She stated that she thought the board had decided at the previous meeting that Mr. Dinh's business should close at 12:00. Ms. Rogers stated that she thought that had been a big issue earlier and she wanted clarification on that. John Krieb stated that the initial decision had been 12:00 a.m., but since they had failed to state that in the motion; anything later than 12:00 a.m. couldn't be legally enforced. Ms. Rogers also asked for clarification on the parking variance and Mike Pitman explained that according to the size of Mr. Dinh's building, he would be required to have 36 parking spaces but because of the location of his business (adjacent to Murray State University) and the fact that most of his customers would be Murray State students that have parking passes, the parking requirements were waived. Ms. Rogers stated that Mr. Dinh now has four spaces, two of his own and he rents two from her. Mr. Rogers explained that her renter has had some problems with noise and underage drinkers hanging around outside his apartment door since Mr. Dinh's business has been opened. She said her problems were not with Mr. Dinh, but the people that are hanging around in the parking lot before and after visiting his business. *Matt Mattingly entered the meeting at 5:50 p.m.*

Barbara Cobb, 2104 Glenwood Drive, Murray was sworn in. Ms. Cobb began by stating that she does not agree with promoting smoking to college students and a hookah lounge certainly does promote smoking. In late October Murray Middle School 7th and 8th graders were invited to a Red Ribbon Week Celebration Dance at the Night Owl. According to a faculty member, the dance was to be a fund raiser for a couple of student organizations and Mr. Dinh offered his facility and a D.J. free for the event. The club was to be closed to anyone other than MMS students or their guests for two hours from 7-9 p.m. and would be opened back to the usual clientele once the event was over. The cover charge was to be \$5.00 and the proceeds were going to the fund raising event. Ms. Cobb stated that several parents had made comments concerning the Facebook page for this establishment as it identifies the business as a hookah lounge. Ms. Cobb said that there is a neon sign of a hookah pipe in the window; thus, promoting smoking. Mr. Dinh took the neon sign from the window and after some discussion, the school cancelled the dance. A student told a teacher that Mr. Dinh wanted to expand his business to be opened to a younger crowd to offer dancing and similar events for middle and high school age crowds in the future. Ms. Cobb said that she has no grounds to object to Mr.

Dinh operating a business for adults; however, she is in opposition to the promotion of tobacco smoking to Murray State students. Ms. Cobb stated that she also objects to this type of entertainment for middle school and high school age students and she feels that it is important to bring this information before the BZA.

Ms. Dowdy stated that she had discussed everything that Ms. Cobb had mentioned with Mr. Dinh and he said that he would be willing to take the hookah sign down if he rented the building out for other types of parties. He also informed Ms. Dowdy that while private parties are going on, there would not be anyone else allowed in the building.

Chairman Whitaker asked if there was any rebuttal.

Mr. Dinh came forward. He said that he was sorry that he stepped on someone's toes concerning the dance for the middle school. Mr. Dinh stated that he would only promote dances at his gymnasium on Coldwater Road in the future. Mr. Dinh said that he thought the neon light would be cool for the middle school students to experience and he did not intend to promote smoking to anyone. Mr. Dinh added that kids will dance to music without having to have an alcoholic beverage. He said that he had thought they could serve smoothies and something from the deli and the parents could come and watch their kids have fun at the party. Mr. Dinh added that he promotes smoothies and drinking coffee and offers a hookah lounge for hookah smoking. He said that there will always be two sides to every story.

Justin Pounds said that he thinks what Mr. Dinh was offering was just like the rebates that are offered by other restaurants in the area even though others have their own views of it as something else.

Chairman Whitaker closed the public hearing and opened it up for board discussion.

Mike Pitman said that initially Mr. Dinh was given permission by the board to open a recreational facility and since that time it has changed from the initial request. He stated that Mr. Dinh's intent is to continue to run that type of facility; however, the demand has been different from what Mr. Dinh had originally requested; thus, in May Mr. Dinh was allowed permission to have a hookah lounge for customers over 18 years of age. Mr. Pitman stated that if a condition was not met at any time and the Planning Staff could not resolve the issue, they would bring it back before the board and it would be subject to being revoked. He added that everyone can use their property as they choose until it becomes a nuisance for their neighbor. Ms. Medlock said that with the changes that Mr. Dinh has made to his business over the past year that his business continues to remain a recreational facility. Ms. Dowdy added that even though the business has changed, the conditions placed on it are still in compliance. Justin Pounds suggested that if complaints were made, that they be documented by Planning Staff and when it comes up again for review the issues be made known at that time. Scott Seiber said that he is convinced that Mr. Dinh is trying to make his business work and he thinks if complaints are received that they can act on them at that time.

Justin Pounds made a motion to approve the conditional use permit for the Night Owl to be reviewed in one year as Mr. Tung Dinh has made attempts to keep his business in

compliance with the initial conditions placed on the business. Scott Seiber seconded the motion and the motion carried with a 5-1 voice vote. Steven Reed voted no.

Questions and Comments: None

Adjournment: Scott Seiber made a motion to adjourn. John Krieb seconded the motion and the motion carried with a unanimous vote. The meeting adjourned at 6:20 p.m.

Chairman, Bill Whitaker

Recording Secretary, Reta Gray