

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, JUNE 20, 2012
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, June 20, 2012 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5th Street.

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

Board Members Absent: Brad Darnall

Also Present: Candace Dowdy, Justin Crice, Reta Gray, Jim Tate, Todd Powell, Susana Bloondahl, Ron Gigliotti, Jim Nasso, Mark McLemore, Bobby Deitz, Hawkins Teague and public audience

Chairman Whitaker called the meeting to order and welcomed all guests and applicants. Chairman Whitaker asked if there were any changes, additions or deletions to the minutes from the May 16, 2012 regular meeting.

John Krieb made a motion to accept the minutes from the May 16, 2012 Board of Zoning Adjustments regular meeting as presented. Justin Pounds seconded the motion and the motion carried unanimously.

Compatibility Hearing: Proposed PDP at 440 Utterback Road – Wesley of Murray: Candace Dowdy used a Power Point presentation to show the property owned by Wesley Murray Meadow, Inc. which is located at 440 Utterback Road. This property is currently located within the city and zoned R-4 (Multi-Family Residential). In June of 2001, the Board of Zoning Adjustments granted a Conditional Use Permit for Wesley of Murray to operate a retirement home with 27 units in an R-4 zone. At that time, the property consisted of 4.2359 acres. Wesley of Murray wishes to build an additional 20 units on the property. In order to qualify for Federal Grant money, HUD required that the property be subdivided into two parcels before an additional entity could be built; therefore, Wesley of Murray has sold a portion of the property to Wesley Murray Meadow, Inc. Ms. Dowdy stated that this project went before the Planning Commission the previous night for review of the new Minor Subdivision Plat. This project was also reviewed by the Planning Commission the previous night for an Advisory Meeting and is now coming before the BZA for Compatibility. Wesley Murray Meadow, Inc. is proposing to add an additional 20 units to the property along with a clubhouse. Ms. Dowdy stated this project will be reviewed as a Planned Development Project and is in compliance with the Zoning ordinance as being a legal use. Parking, stormwater detention, cross-over easements and setbacks will be reviewed through this process. The site plan submitted indicates adding five (5) quad-plex apartments that are bungalow style buildings in addition to a clubhouse. Each unit will be 540 square feet and the clubhouse will be 3,000 square feet in size. There are 31 existing parking spaces at this location and the site plan shows adding 30 additional spaces. Ms. Dowdy said that a side setback would be required for approximately eight feet on the west side of the property as the requirement for a side setback is 10 feet and the current site plan is showing the buildings at 2-3 feet from the property line. The site plan also shows a 35 ft. ingress/egress easement that is proposed to be shared between the two lots. A copy of the site plan has been submitted to the Fire Department, Sanitation Department and Utilities Department for their review.

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

Jim Nasso, Chief Operating Officer for Wesley Housing Corporation in Cordova, Tennessee, came forward to answer questions. Mr. Nasso stated that he was involved in the development of Wesley of Murray some 11 years ago and continues to be involved. He added that Ms. Dowdy had summed up the proposal perfectly. Mr. Nasso stated the first grant that they received from the Federal Government allowed them to purchase all the property; however, the grant that will be used for the second development requires them to have a separate entity; therefore, the property will be subdivided into two tracts. Tract 1-A continues to be owned by Wesley of Murray and consists of 2.0849 acres and Tract 1-B is now owned by Wesley Murray Meadow, Inc. and consists of 2.1510 acres. Mr. Nasso explained that the three buildings that will be built near the current detention area will be built on the top side of the area and should not interfere with the detention area. Chairman Whitaker asked Mr. Nasso for a description of the proposed quad-plexes. Mr. Nasso said that the first development was a two story building with hallways connecting the units. The proposed development will be one story with four units to each quad-plex. Each unit will be 540 square feet. The bungalow design was chosen in order to give the tenants a choice of living in a one story or two story building. This housing is designated for those 62 years of age or older. Mr. Nasso explained that the demand for this type of housing had been tremendous and the property has proven to be successful as they are continually at capacity with a waiting list. He added that with this development they will be able to construct a clubhouse that will be available and large enough for both entities. The first development has a dumpster area behind the development with a chute that carries the trash from the second floor to the dumpster. The proposed development will have a dumpster area located near the clubhouse. Mr. Nasso and Ms. Dowdy said that this development is not assisted living, but it is for residents who are able to take care of themselves or provide their own means to do so.

Chairman Whitaker asked if there were any additional questions or discussions from the board. There were none. Chairman Whitaker asked if the board was ready for a motion.

John Krieb made a motion to approve the proposal for the Residential Planned Development Project at 440 Utterback Road by Wesley of Murray as it is compatible with the surrounding area pending the approval of the plans and all the other board approvals that will be involved in the future. Mary Anne Medlock seconded the motion and the motion carried with a 6-0 voice vote.

Public Hearing: Dimensional Variance Application for a Side Building Setback – 112 North 12th Street – Campbell Realty: Candace Dowdy used a Power Point presentation to show the location of the property located on the corner of Olive and North 12th Street. Campbell Realty owns the property. It was recently brought to the attention of the Planning Department that a canopy had been erected on the south end of the building and that it appeared to not meet the side setback requirements for the B-4 zone. The building official made an inspection of the property and determined that the canopy was attached to the building and informed the property owner that a building permit should have been applied for and that it was not meeting the setback requirements for the B-4 zone. Mr. Jim Tate with Campbell Realty stated that the purpose of the canopy was to provide coverage for Lake Chem Community Federal Credit Union customers as they pulled up to the drive thru window. This new canopy is erected on the south property line and will require a ten (10) foot side setback variance in order to remain as is. In reviewing this request Planning Staff noticed that all of the required parking in the rear of the building had been eliminated. The required number of parking spaces for this development was 21. This number was calculated on retail sales and consumer service businesses. Currently there is one vacant tenant space in the building with Campbell Realty and Lake Chem Community Federal Credit Union occupying the remainder of the building with 15 off street parking spaces. Recalculating the parking requirements as office space, the total parking requirements would only be 14, thus the parking requirements are being met. Ms. Dowdy added that Campbell Realty also owns the adjacent building where The Cherry Tree Florist is located. There is additional parking in the rear of this building for overflow.

Chairman Whitaker asked if dimensional variances go with the property. Ms. Dowdy stated that typically a variance runs with the land; however, the board has the opportunity to approve the variance for the business stating that if the business should relocate in the future, the variance would be void and the canopy would have to come down.

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

Jim Tate, 16 Gil Lane, Murray was sworn in. Mr. Tate was representing Campbell Realty. Mr. Tate stated that Lake Chem had the canopy erected themselves and he was unaware that a building permit was needed since there was no remodeling involved. Mr. Tate continued that Campbell Realty owns the building where The Cherry Tree Florist is located. They have plans to eventually tear the building down and extend the Campbell Realty building to the south. He added that they had moved the parking from the rear of the Campbell Realty building to behind the florist building in order to make room for the drive-thru at Lake Chem. Mr. Tate said that Campbell Realty also owns the property behind the florist that goes all the way to Walnut Street and runs behind Cliff Coleman's property continuing on to CVS Pharmacy. Scott Seiber stated that the only issue he could see would be if they did not own the adjoining property. Steven Reed asked if Lake Chem would be at that location for an extended period. Mr. Tate stated that they had signed a three year lease.

Chairman Whitaker asked if there was anyone that wished to speak against the application. There was no one; therefore, he closed the public hearing and turned it over to the board for discussion.

Chairman Whitaker stated that the canopy did not appear to be a huge problem unless Campbell Realty decided to sell the adjoining property (even though that did not look like that would happen). He added that he did not like the idea of giving a dimensional variance for a structure that is on the property line. Ms. Dowdy said that Mr. Tate had indicated to her that he thought they were located in a B-2 zone. A B-2 zone has a zero side setback requirement for an interior lot; thus, freeing them up to build directly on the lot line. Campbell Realty is actually in a B-4 zone and that requires a ten foot side setback on the building. Scott Seiber said that he did not think that it was necessary to add anything concerning the parking requirements to the motion since Campbell Realty owned the adjoining property and shared parking is available. John Krieb and Justin Pounds stated that it would be a benefit to the property owner to approve a parking variance.

Scott Seiber made a motion to approve the dimensional variance application at 112 North 12th Street for the owner Campbell Realty for a ten foot side setback variance for the existing canopy only on the south side of the existing building. This variance will not affect the adjoining property to the south since Campbell Realty also owns this property and the placement of the canopy does not hinder or obstruct the view of traffic. This variance will not adversely affect the health, safety or welfare of the general public, will not alter the essential character of the general vicinity, will not cause a hazard or nuisance to the public and will not allow an unreasonable circumvention of the requirements of the zoning regulations. Mr. Seiber also moved to approve a six parking space variance for Campbell Realty since they own the property adjoining 112 North 12th Street and can provide additional parking at this location. At such time the property at 110 North 12th is sold, a cross-over parking agreement must be obtained or the required parking must be restriped on site. John Krieb seconded the motion and the motion carried with a 5-1 voice vote. Bill Whitaker voted no.

Mr. Tate came forward to ask for clarification of the motion and Mr. Pounds explained that if he should rent the property on the south side of the building to another tenant in the future, he would have to re-apply for another dimensional variance in order to keep the canopy.

Public Hearing: Dimensional Variance Application for 25 Foot Side Setback on Accessory Structure – 1307 South 12th Street – DT Properties: Justin Crice used a Power Point presentation to show the property and Toyota of Murray building located at 1307 South 12th Street that is owned by DT Properties. The property owner is requesting to put solar panels at the northeast corner of their property which adjoins the Glendale Church of Christ property. There is an existing fence on the property line that divides the property between Glendale Church and Toyota of Murray. The proposed panels are to be installed by Harvest Energy Solutions. The system's dimensions are 150' x 30'. When installed the maximum height of the solar panels will peak at 12 feet and 11 inches. The solar panel structure is considered to be an accessory structure and in a B-2 zone all non-residential uses which are located on lots adjacent to a residential zoning district shall maintain a minimum setback of twenty-five feet for all structures in the side and rear yards. Since Dwain Taylor also owns this property and the property to the east of the proposed site a rear setback will not be needed. The reason for the side setback is because the proposed site joins an R-4 zone. Scott Seiber asked why that particular location was decided on for the panels. Mr. Crice stated that there is a representative present that will describe the panels in more depth and explain how that decision was made on the placement of the panels.

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

Todd Powell, 190 Candlelight Drive, Almo was sworn in. Mr. Powell began by explaining how the decision was made for the location of the panels. He stated that initially they were looking into putting the panels on the roof of the Dwain Taylor Chevrolet building. A structural engineer looked at the roof and conveyed that the roof might not support the weight of the panels. The second choice for location was on the roof of the Toyota of Murray building. The roof on that building is quite cluttered with other things along with vent pipes; thus, that building is also not suitable for the installation of the custom designed panels. Mr. Powell explained that since Mr. Taylor owns a car dealership, his retail sale lots are valuable to his businesses; thus, using his front parking lots for the panels would not be an option. Mr. Taylor decided to locate the panels in a less conspicuous and unused portion of the property. Mr. Powell said that there will be 208 panels. Each panel is 40 x 66 inches with 240 watts which will generate 49.92 kilowatts. The minimum height in the front will be 4 feet off the ground and 12 feet in the rear. They will be at a 30 degree pitch from the hill in the rear. The panels are fixed and do not move. Mr. Powell indicated that these solar panels have a 25-30 year life span and are rated for baseball sized hail. The system is steel piping, the solar panels and steel channeling that will lock it all together. (Mr. Powell passed around a booklet with pictures for the board to view. *The booklet was entered as Exhibit A.*) Mr. Powell is an extension agent for Ag & Natural Resources and he has worked on this project with Mr. Taylor for six months. Mr. Taylor and Toyota are very much involved with the "green" movement. Mr. Taylor wants the panels visible for the public to see his approach in extending the "green" movement. The current TVA program deadlines are quickly approaching; therefore, it is urgent to get this project moving. Mr. Taylor will be investing \$165,000 and within one year the panels should save him \$14,500 in electricity costs. They will be the first of this kind within the city of Murray and first commercial application in Western Kentucky. Mr. Powell stated that he is actually overseeing this project for Mr. Taylor and a contracted company will install the panels. Mary Anne Medlock asked if Mr. Taylor had considered putting these panels on a rear lot. Ms. Dowdy said that it was her understanding that Mr. Taylor was in a lease-to-own agreement for the rear property. Mr. Powell said that Andy Foley had indicated to him that Mr. Taylor is now the actual owner of that property. He added that the panels need the southern exposure in order for them to work properly and the proposed site is actually a well suited spot. Mr. Powell said that there is a potential for expansion of Mr. Taylor's retail parking lot to the rear property and if the panels were located in the middle of the parking lot, it would be possible for the panels to get damaged by traffic in and out of the lot. Mr. Powell stated that the panels will be fenced on all sides so they are not accessible to the general public. Mr. Powell said in talking to Glendale Church, the

church has intentions to expand their building and take the parking lot all the way to the fence on the south side of the church's property. He also said that the church had no objection to this variance. Chairman Whitaker asked if they planned on replacing the fence. Mr. Powell said the fence is 6-7 feet tall and it is adequate on the back. The fence will be extended down the sides and front. There will not be any green space next to the panels as they will be located on the gravel parking lot.

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 at 1307 South 12th Street, owner DT Properties, for a 25 ft. side setback variance on proposed solar panels; the placement of these solar panels do not hinder nor obstruct the view of traffic; 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. John Krieb seconded the motion and the motion carried with a 6-0 voice vote.

Public Hearing: Dimensional Variance Application for Setback and Height Variance on Proposed Fence – 802 Meadow Lane – Chris Bloomdahl: Justin Crice used a Power Point presentation to show the property at 802 Meadow Lane owned by Chris & Susana Bloomdahl. This property and the surrounding properties are zoned R-2 (Single Family). They are requesting a variance to erect a fence. The property is located on a corner lot and fronts both Meadow Lane and Oak Street. The applicant would like to install a six (6) foot tall fence along the secondary street side (Oak Street) and would like for the fence to be five (5) feet off the property line. The Zoning Ordinance regulations state that on a corner lot, the side facing the secondary street shall be treated as a front yard; therefore, it could only be four feet in height and must be ten (10) feet off the property line. The applicant currently has a fenced in area behind their home but would like to expand the area. If the board considers this application they will need a two foot height variance and a five foot setback variance. Ms. Dowdy questioned whether the proposed fence would obstruct the view of the adjoining property owner on Oak Street when they back out of their driveway. Adjoining property owners were sent notification of the meeting and the Planning Staff received no calls or letters concerning this matter.

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

Susana Bloomdahl, 802 Meadow Lane, Murray was sworn in. Ms. Bloomdahl said that the main reasons that they were wishing to construct a new fence was to help protect her small children and to take advantage of their entire yard. John Krieb asked if they had considered staying within the 10 foot setback. He said that looked like quite a bit of space in comparison to what they now have fenced. Ms. Bloomdahl stated that she would like to take advantage of as much of the property as possible to use for their children's play area. She added that they will abide by any decision that the board makes. Mary Anne Medlock stated that she is concerned with taking the fence to the 10 foot setback line because of the view obstruction. She added that there is already a bush there that obstructs the view when backing out of the driveway. Ms. Bloomdahl replied that their house is on a slight hill and as you are going down Meadow, visibility isn't that good for Oak Street as it is. She does not think that the fence would add to the poor visibility. Ms. Bloomdahl added that once they put up a fence, the property on the outside of the fence is practically non-usable; therefore, they would like to enclose and utilize as much of their property as possible. Ms. Bloomdahl brought a letter of support from neighbor, Karl Hussung. *The letter was entered as Exhibit A.*

Ron Gigliotti, 800 Meadow Lane, Murray was sworn in. Mr. Gigliotti said that he was curious when he received the letter from the city and he did not know what was going on. Ms. Dowdy explained the ordinance for fencing in the city. Mr. Gigliotti stated that he lives on the north side of the Bloomdahls and there are currently trees on the property line between the two properties. He added that he did not have any objections to the proposed fence.

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.

Mary Anne Medlock said that she can certainly understand the Bloomdahls wanting to utilize all the space they can for their children a safe play area; however, she is still very concerned with the site lines. The tree and bush that are in the front yard are already obstructing the visibility and she thinks that allowing Mr. and Mrs. Bloomdahl to build the fence at that location will only add to the visibility problem. John Krieb said that he agreed with Ms. Medlock and added that he was also concerned with the general aesthetics of the fence being that close to the street. Scott Seiber stated that he shared the same thoughts as Ms. Medlock and Mr. Krieb, but he could also sympathize with the Bloomdahls in wanting to utilize as much yard space as possible for their children. Justin Pounds said that he thought a five foot setback would be ample.

Justin Pounds made a motion to approve the Dimensional Variance Application at 802 Meadow Lane, owner Chris Bloomdahl, for a five (5) ft. side setback and a two (2) ft. height variance on a proposed fence; the placement of this fence will not hinder nor obstruct the view of traffic; 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. The motion was defeated with a 3-3 voice vote. John Krieb, Mary Anne Medlock, and Steven Reed voted no.

The board members that voted no stated that the reason they voted no was because they disagreed with the five foot side setback. John Krieb said that it would be safer for the children if the fence was located five additional feet back from the street because of the slope of the land. Mary Anne Medlock stated there would be no site line if the fence was located at the proposed site. She said the visibility is not good currently and allowing the variance will only make the situation worse. Steven Reed stated that he did not oppose the proposed height of the fence only the proposed location. After discussing the pros and cons in detail, the board was ready for another motion.

John Krieb made a motion to approve the Dimensional Variance Application at 802 Meadow Lane, owner Chris Bloomdahl, for a two (2) ft. height variance on a proposed fence that would meet the setback requirement on the Oak Street side; the placement of this fence will not hinder nor obstruct the view of traffic; 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. Mary Anne Medlock seconded the motion. The motion carried with a 4-0 voice vote. Justin Pounds and Scott Seiber abstained.

Questions and Comments: Chairman Whitaker brought up the Conditional Use Permit that was granted to John Gray for outdoor storage. He said that in February he went by the establishment on South 4th and there was a trailer parked in the front of the building as well as a "Going out of Business" sign. Chairman Whitaker said that this is the same story every time he drives by. Mr. Gray constantly violates all aspects of the Conditional Use Permit. He has stuff in the right-of-way, and stuff out front. Chairman Whitaker

stated that he had contacted Ms. Dowdy to make her aware of the situation. He said that Ms. Dowdy contacted Mr. Gray and gave him a deadline to have the place cleaned up and reminded him that if the board should revoke his permit, he would have to store everything inside the building. Chairman Whitaker stated that Mr. Gray must comply with the permit whether he is in business, going out of business or officially out of business. He added that he thinks that the permit should be revoked since Mr. Gray has not proven to be serious about keeping compliant at all times. Mary Anne Medlock said that the "Going out of Business" sign has been there since August 2011. She added the back area is also in bad shape. Scott Seiber commented that if Ms. Dowdy contacted Mr. Gray and gave him a strict deadline, he would probably do as he has done in the past. He would clean up the place for the mean time and then later on down the road, it would be just like it is now, non-compliant. Justin Pounds asked if notification is sent before a permit can be revoked. Ms. Dowdy said that if someone is found to be in violation, you have to notify that person, and if it is not brought into compliance, the matter is brought back before the board. The board makes the decision whether to revoke the permit at that time. Ms. Dowdy asked if the board would like for her to send Mr. Gray a letter concerning the noncompliance issues. John Krieb said that would be similar to what was done with Campus Core. Their noncompliant actions concerning the sidewalks resulted in the BZA's legal counsel sending them a letter and putting additional pressure on the applicant; thus motivating Campus Core to comply. Ms. Medlock added that this is an example of why the board members need to be aware of the consequences when they approve these types of applications. Steven Reed asked if they could put this matter on the agenda for next month to look at revoking the permit. Justin Pounds said that he thought the board should ask for legal advice before they went any further. Ms. Dowdy read the ordinance aloud concerning non-compliant permits. She agreed to contact Mike Pitman, legal counsel, and ask him to draft a letter for Mr. Gray stating that this matter had been reviewed on four different occasions for non-compliance since the permit was granted. She said that Mr. Gray should be contacted and given a date to come into compliance and if he fails to do this, inform him that proceedings will begin in the revoking of his permit. Ms. Dowdy said that once she meets with Mr. Pitman, she will notify the board members to let them know what counsel advises. If Mr. Pitman decides to send a letter to Mr. Gray, she will send a copy of that letter to the board members.

Scott Seiber asked why counsel had not been at the last few meetings. Ms. Dowdy stated that because of budget constraints, unless they felt that items on the agenda were controversial issues, they have not been asking Mr. Pitman to attend. She said that Mr. Pitman was in agreement to this and would attend any time that the board requested.

Adjournment: Scott Seiber made a motion to adjourn. Justin Pounds seconded the motion and the motion carried with a unanimous vote. *The meeting adjourned at 6:30 p.m.*

Chairman, Bill Whitaker

Recording Secretary, Reta Gray