

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, AUGUST 22, 2012
5:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, August 22, 2012 at 5:30 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 and John Krieb

Board Members Absent: Justin Pounds, Steven Reed and Brad Darnall

Also Present: Candace Dowdy, Justin Crice, Mike Pitman, David Roberts, Reta Gray, Tony Nolcox, Portia Pace, Susan Brown, Mike Schiller, Daniel Yong, Mark & Karen Welch, Rebecca Feldhaus, Shelley Baskin, Don Elias, Paige Graves, Officer Clere 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 July 18, 2012 regular meeting.

John Krieb made a motion to accept the minutes from the July 18, 2012 Board of Zoning Adjustments regular meeting as presented. Scott Seiber seconded the motion and the motion carried unanimously.

Public Hearing: Conditional Use Permit request for proposed PDP at 1807 College Farm Road – Tony Nolcox, Sergio & Pam Tonini: Justin Crice used a Power Point presentation to show the property at 1807 College Farm Road. The property is zoned R-4 (multi-family residential) and currently consists of three tracts of land. Mr. Nolcox has indicated the existing storage building shown on the preliminary plat will be the only remaining building on the property. This property has road frontage off of College Farm Road and a 43 ft. deeded access easement off N. 18th Street across TVA property. The property's deeded area has surveyed to be approximately two acres instead of the 2.75 acres that was presented last month; thus, Mr. Nolcox had to reduce the number of units from 40 to 36. In addition, the drive aisles and the green space between the units were reduced from 50 feet to 24 feet. There may also be some deviation from the original plat on the installation of the water, sewer and electric lines which is yet to be determined. Each building will have four apartments with eight of the buildings being 32' X 62.50' and one building being two story at 25' X 62.50'. Each one bedroom unit will be approximately 15.6 ft. in width. Parking requirements for a development this size are 108 spaces. The plat shows 64 spaces that are 9' X 18'; therefore, this project will require a 44 parking space variance. The entrance off College Farm Road is shown as 25 ft. in width and reduces down to 20 ft. when accessing the south portion of the property. The access coming into the property from N. 18th Street is 24 feet wide and reduces down to 20 ft. in front of the units. The proposed drive aisles and new fire hydrant were approved by the Fire Marshall. A dumpster area is shown in the southwest corner of the property that was approved by the Sanitation Department as being sufficient. Stormwater detention plans have yet to be submitted but any final plat approval will be contingent upon review and approval by the Planning and Engineering Department. Mr. Crice and Ms. Candace Dowdy reviewed the concerns that were brought up at the previous night's Planning Commission meeting. It was noted that Ms. Portia Pace, property owner to the west had asked if the development could be reconfigured by flipping the townhouse units and the drive aisle from the west side over to the east side. She thought that this might alleviate traffic noise since the entrance runs along her east property line. Mr. Nolcox indicated that he chose to put the drive aisles along the perimeter of the property to keep the noise confined within the development. He also said if he changed the configuration of the layout, the two story building would be closer to her property. The

proposed eight foot privacy fence wouldn't create a barrier with a two story building. Other concerns from the neighbors were potential criminal activity, lights, privacy fence, drainage and water run-off, and added traffic to College Farm Road. Mr. Crice explained that these are typical concerns from adjoining property owners when developments of this nature are proposed; however, the Planning Commissioners did place a condition on the motion that would encourage Mr. Nolcox to consider some of the concerns of the residents in the area when looking at the final plat. John Krieb suggested that the entrance off College Farm Road be centered on the property with green space on each side. Adjoining and adjacent property owners were notified of the public hearing.

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

Tony Nolcox, 1211 Coyote Ridge Road, Cadiz, Kentucky was sworn in. Mr. Nolcox stated that he met with the concerned neighbors after the meeting the previous night and he felt that they had resolved the issues and concerns that had been brought up. A lot of the concerns from the North 18th Street side were the water issues. He explained that the next step in this process is to talk to the soil and water engineers and those concerns should be cleared up once the stormwater detention area is designed. Mr. Nolcox stated that the property was downsized after the survey was conducted. He is aware that he is going to lose one or two additional buildings located at the southern end of the development in order to compensate for the stormwater detention; however, he still intends on providing the common areas. Mr. Nolcox addressed the privacy. He said when he spoke to the concerned neighbors the previous night he told them that he would be constructing an eight foot privacy fence along the perimeters of the property. In addition to the fence, Mr. Nolcox volunteered to re-plant trees on the adjoining property owners land along the property line to create more privacy. Mr. Nolcox explained that the reason they chose to put the north entrance to one side was because of the easier access to the sanitation dumpster; however, he did agree to look at relocating the north entrance towards the center. Mr. Nolcox said that the existing storage building that will be left on the property will be divided; half will be used for storage of maintenance equipment and half will be used for onsite laundry services for the residents. There will also be a carwash in that area for the tenant's use. Mr. Nolcox concluded that he is willing to work with the city and the adjoining property owners in resolving their concerns.

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

Portia Pace, 1809 College Farm Road, Murray KY was sworn in. Ms. Pace asked Mr. Nolcox to consider reconfiguring the layout by moving the two-story unit to the back of the development and a one story unit to the front. She commented that she liked the idea of relocating the entrance off College Farm Road to the center of the lot. Ms. Pace already has a privacy fence on her property; thus, an additional fence will provide even more privacy and help with the noise. There is a ditch between the two property lines and Ms. Pace wanted to know what would happen with the ditch and who would maintain it. Mr. Crice stated that once the stormwater detention was designed, they would have a better answer for Ms. Pace concerning the drainage ditch. He added that Mr. Nolcox had indicated that he would be willing to remove the trees on the property line and replace them with trees of the property owner's choice.

Susan Brown, 701 North 18th Street, Murray KY was sworn in. Ms. Brown stated that she does feel a lot better about this development after speaking with Mr. Nolcox the previous night; however, she still doesn't like the fact of having an apartment complex in her back yard. She is pleased that Mr. Nolcox appears to be listening to their concerns. Ms. Brown asked for an explanation of the surrounding zoning districts. Ms. Dowdy explained that this property is located in an R-4 zone (multi-family residential) and the surrounding properties are R-3 (multi-family) or R-2 (single family).

Mike Schiller, 703 North 18th Street, Murray KY was sworn in. Mr. Schiller stated that he did not like the idea of this development going behind his house either, but he did not think that there was anything that he could do about it. Mr. Schiller asked for clarification of where the privacy fence would go and what trees would be removed. Ms. Dowdy stated that the fence would go around the perimeter of the development and the only trees that would be removed would be the trees on Mr. Nolcox's property. She added that Mr. Nolcox would be willing to work with the surrounding property owner's to add trees along their property line to be used as an additional sound barrier. Mr. Schiller stated that the students that live in the existing two-story apartments to the east of this proposed development walk through his back yard on the way to campus and he is relieved to know that there will be a fence between him and the development, preventing additional pedestrian traffic across his property.

Chairman Whitaker asked if there was any rebuttal. There was none. Chairman Whitaker closed the public hearing and turned it over to the board for discussion.

John Krieb made a motion to approve the conditional use permit for the Residential Planned Development Project at 1807 College Farm Road for Tony Nolcox. He then moved to approve a 44 space parking variance for this project. This approval was contingent upon final plat approval by the Planning Commission, the stormwater detention plans being approved, the installation of an eight foot vinyl privacy fence around the perimeters, the placement of additional trees along the perimeters including limited planting of trees on the adjacent property owner's rear yards as requested and upon the development meeting all other city regulations. Mary Anne Medlock seconded the motion and the motion carried with a 4-0 voice vote.

Public Hearing: Conditional Use Permit request for proposed PDP at 907 Coldwater Road – Daniel Yong: Candace Dowdy used a Power Point presentation to show Daniel Yong's property located at 907 Coldwater Road. This property was developed as a PDP in 1999 by Steve Tinsley. During that process, the property was approved with two units located on it. Mr. Yong is proposing to add two additional units on the east side of the existing building. The new building is shown on the Preliminary Plat as being 28 feet from the front property line; therefore, a 22 feet front setback variance will be required. The preliminary plat indicates that adequate parking space will be provided. The sanitation department has approved a dumpster location that will service both 907 and 905 Coldwater Road, eliminating rollout containers. Ms. Dowdy stated that stormwater detention was addressed when these properties were developed and there was a French drain system installed but Mr. Yong had indicated that he didn't think the current drain system was working adequately. Ms. Dowdy added that Mr. Yong will be addressing that issue. The existing unit on the east end of the building has two windows; one in each bedroom that will have to be relocated so that each bedroom will have a separate means of ingress/egress. (This is required per fire and building codes.) Ms. Dowdy said that Mr. Yong has indicated that at some point, he is looking to put the entire parking area in a hard surface. Adjoining and adjacent property owners were notified of the public hearing.

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

Daniel Yong, 20 Scarlett Drive, Murray was sworn in. Mr. Yong stated that he had met with Don Rogers from the Sanitation Dept. and had decided to move the dumpster location forward from the original drawing for easier access by the sanitation truck. Mr. Yong added that he does not think that the French drain system is working very well. He said that he had graded the area to help improve the flow of the water; however, he does not think it drains at all. After Mr. Yong puts a hard surface on the parking area, he plans to ditch the property where the water will flow downhill to the drain. He said that he has observed the water flow when it rains and he determined that most of the water comes from behind the development. At times the water stands 3-4 inches in the French drain. Mr. Seiber asked if a stormwater

detention plan was required for the development in 1999. David Roberts stated that it was and the French drain was installed to serve as the stormwater detention. He added that the drain has not been maintained over the years and now needs to be improved or replaced with some other means of drainage. Mr. Roberts said the property is located on a state road; therefore, if any changes are made to the entrances, Mr. Yong will be required to get an encroachment permit from the state. Mr. Yong said that he planned to have an engineer look at the drainage situation once the construction is completed.

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

Scott Seiber made a motion to approve the conditional use permit for the Residential Planned Development Project at 907 Coldwater Road for Daniel Yong. In addition he moved to approve a 22 foot front yard setback variance for the proposed building only. This approval is contingent upon final plat approval by the Planning Commission, the stormwater detention plans being approved, and upon the development meeting all other city regulations. John Krieb seconded the motion. The motion was then amended to the following:

Scott Seiber made a motion to approve the conditional use permit for the Residential Planned Development Project at 907 Coldwater Road of Daniel Yong. He also added to approve a 23.5 foot front yard setback variance for the proposed building only. This approval is contingent upon final plat approval by the Planning Commission, the stormwater detention plans being approved, and upon the development meeting all other city regulations. Mr. Yong has a one year time limit to turn the existing gravel parking area into a hard surface. John Krieb seconded the motion and the motion carried with a 4-0 voice vote.

Public Hearing: Conditional Use Permit request for two non-related persons to live together at 1322 Main Street – Mark & Karen Welch: Candace Dowdy used a Power Point presentation to show the property at 1322 Main Street owned by Mark and Karen Welch. The property is located in an R-2 (single family residential) zone and shares a driveway with the property to the east at 1320 Main Street which is owner occupied. The property to the north, east and west are also zoned R-2 and the property to the south (across Main Street) is zoned R-4 (multi-family residential). The Welch's purchased the home in 1992 and lived in the house until 2009 when they purchased the property across the street and made that their primary residence. The house at 1322 Main Street was built between 1927 and 1935 as a single family home with two attached apartments. The two apartments are upstairs and both have front and rear entrances. When the home was constructed there was no zoning; therefore the property was "grandfathered in" as far as the usage. The home has primarily been owner occupied with the two apartments used as rental units. The current use of this structure and premises is non-conforming. Ms. Dowdy stated that it was brought to the attention of the Planning Department that the Welch's had possibly rented the house to non-related persons which violates the zoning regulations. Mrs. Welch informed staff that she and her husband had rented the house as of July 1, 2012 to two separate individuals. Ms. Welch thought that up to two non-related persons were allowed as a permitted use in the R-2 zone. Ms. Dowdy stated that she informed Mrs. Welch of the zoning regulations in the R-2 zone and explained that they would either have to bring the property into compliance or apply for a conditional use permit. Ms. Dowdy said she had asked Mrs. Welch if the two non-related persons met the definition of a family and Mrs. Welch said that they did not. Ms. Dowdy said that after she spoke to Attorney Mike Pitman, there was some question as to whether the BZA had the authority to grant a conditional use permit for this property or not. Ms. Dowdy questioned whether the property is now three rental units or is it actually an expansion of what the property has been for the past 20 years. Ms. Dowdy stated that this property had been used as rental property in years past but when the Welch's bought the property and lived there for 20 years, it then made the use the same as when the house was built; single family use with two rental units. Mary Anne Medlock stated that before the Welch's bought the property, she had lived

there while she was attending MSU. She said that the apartments were rented to individuals and the main floor was rented to a family. Mr. Seiber asked Mr. Pitman for his opinion on the use of the property. Mr. Pitman stated that there were people there to make their arguments for and against the property; therefore, he did not wish to state his opinion until the others had spoken. Mr. Pitman said that he had tried to think of another house in town that would have a similar situation and nothing came to mind. He added that the property is in an R-2 zone and it has been used as non-R-2. John Krieb asked how the properties to the west were being used. The property at 1324 Main Street just to the west of this property is also owned by the Welch's. It is a duplex and is used as rental property. The property on the corner of Main and 14th Street is being used as multi-family in an R-2 zone. Ms. Dowdy said that the properties had been used this way for years and that she could not find documentation where conditional use permits had been granted for them. Adjoining and adjacent property owners were notified of the public hearing.

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

Mark Welch, 1321 Main Street, Murray KY was sworn in. Mr. Welch stated that the information that Ms. Dowdy had shared was correct. The Welch's purchased the property in 1992 from a professor at Murray State University. They understood that the property had been rented for the previous 10 years. In 1992 when the Welch's moved in, the property became an owner occupied house again. Mr. Welch said that their long term intention is to sell the property to an owner occupant. They have not listed the house because they want to be very careful and selective about whom they sell it to. The house was largely in disrepair when they purchased it and since they have made numerous repairs. They would like to see the property continue to be maintained especially since they live across the street. Mr. Welch added that he and his wife thought they were in compliance until they heard from Ms. Dowdy. Mr. Welch said that both of the current tenants are professional people. Rebecca works in the Office of Regional Outreach at Murray State University and Shelley is on staff with WKMS at Murray State University. Mr. Welch said that he assumed the complaint was made because the tenants were thought to be college students and that is not the case. Ms. Medlock commented that the fact that they are dealing with professionals versus college students should actually make no difference. She added that the board has heard many cases in the past that were denied because college students as tenants could not meet the definition of a family. Mr. Welch said that he would hate to turn the two tenants out only a couple of months after they rented the property as he feels an obligation to them as a landlord. He asked the board to consider issuing a conditional use permit as long as Shelley and Rebecca are living in the home. When they decide to vacate the property, then the conditional use permit would not extend to the next tenants. John Krieb asked what would happen if one of the tenants moved out. Mr. Welch said that the other tenant would have the option of paying the entire rent for the house or moving.

Rebecca Feldhaus, 1322 Main Street, Murray KY was sworn in. Ms. Feldhaus stated that she is a proud returning staff member of Murray State University. Ms. Feldhaus and her roommate both work within walking or biking distance to their jobs on the Murray State campus. She recently started a new position that she really enjoys; therefore, she is looking at making this house her home for quite some time. She said that people come and go from rental properties; however, she and Shelley plan on staying there for quite some time providing the board will allow it. She thanked the board for their consideration.

Shelley Baskin, 1322 Main Street, Murray KY was sworn in. Mr. Baskin stated that he works for WKMS as a reporter and he also plans to stay around for a while. He said that he and Rebecca had been really good friends for some time and they talked about the living arrangements for a while. Mr. Baskin stated that he did not know that they were in violation of the ordinance when they moved in, but he would like for the board to allow them to remain in the house until they choose to move out or until the Welch's sell it.

Don Elias, 1320 Main Street, Murray KY was sworn in. Mr. Elias stated that he and his wife have lived next door since 1991 and they share a driveway with the property. He said that Ms. Dowdy and Mr. Welch had covered the situation in detail. He stated that he has no problems at all with the tenants that are currently residing there; however, he does have future concerns. He feels that a conditional use permit does need to be put in place with limitations. He is very comfortable with the Welch's being the owners, but he wonders what could happen in the future should Mark and Karen not be the owners. He would like to see the area stay single family zoning and well preserved. Mr. Elias commented that you could either have a situation where a family moved into the home and didn't take care of the property or you could have a situation such as this where the property is rented to a non-family and the property is well maintained.

Scott Seiber stated that he has been on the board for 20 years and it is still a difficult job to make decisions such as this one. He likes to look at each application as a case by case situation and cases such as this still make him a little uncomfortable. Mr. Seiber stated that he would like for single family neighborhoods to stay that way and continue to trend particularly in the areas around campus. He added that he does not personally know the two occupants; however, he knows of them and they seem to be quality people making the decision even tougher.

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. Pitman said that he did not know how this would be argued; thus, he held his opinion until after everyone had spoken. He read over the ordinance in regards to an R-2 zone and also the KRS statute. Mr. Pitman said that the question is: Can you grant a conditional use permit for one unit in a three unit building in an R-2 zone or is this "grandfathered in" to the point that the use really hasn't changed? Mr. Pitman added that this could be argued that it is a non-conforming use that has been changed from a single family to two non-related individuals. Chairman Whitaker asked if the property would ever go back to being "grandfathered in". Mr. Pitman stated that is the risk that he sees and that his personal thought is no. He clarified that you are "grandfathered in" until you change that original use.

Mary Anne Medlock said that she has a good working relationship with Mr. Welch and understands the dilemma that the occupants must be in; however, she is concerned with what could happen with future tenants if she should vote to approve the application; therefore, she does not think that she can vote in favor of the application no matter how much she wants to.

John Krieb made a motion to deny the Conditional Use Permit application for two non-related persons to occupy the primary premises at 1322 Main Street. The Board of Zoning Adjustments will grant a time period to the owner of the property of eighteen months to become compliant and return the property to a single family or unoccupied structure and the rental of the two apartments will be allowed to continue as "grandfathered in" situations. Scott Seiber seconded the motion and the motion carried with a 4-0 voice vote.

Questions and Comments: None

Adjournment: Mary Anne Medlock made a motion to adjourn. Scott Seiber seconded the motion and the motion carried unanimously. *The meeting adjourned at 7:35 p.m.*