

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, NOVEMBER 14, 2012
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, November 14, 2012 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5th Street.

Board Members Present: Justin Pounds, Scott Seiber, Mary Anne Medlock, Josh Vernon

Board Members Absent: John Krieb and Brad Darnall

Also Present: Justin Crice, David Roberts, Mike Pitman, Warren Hopkins, Officer Kendra Clere, Reta Gray, Jennifer Tolley, Hawkins Teague, Michael Stom, Jimmy Hale, Tung Dinh, and public audience

Chairman Pounds called the meeting to order and welcomed all guests and applicants. He stated that the Board of Zoning Adjustments had a new member and at that time he would be sworn in. Mike Pitman swore in Josh Vernon. Chairman Pounds asked if there were any changes, additions or deletions to the minutes from the October 17, 2012 regular meeting.

Scott Seiber made a motion to accept the minutes from the October 17, 2012 Board of Zoning Adjustments regular meeting as presented. Mary Anne Medlock seconded the motion and the motion carried unanimously.

Recognize: Warren Hopkins, City Attorney and Officer Kendra Clere, ABC Administrator to discuss alcohol beverage control regulations: David Roberts explained that the new City of Murray ABC Administrator is Officer Kendra Clere. He added that regulations are currently under consideration by the City Council as they relate to retail businesses, night clubs and taverns. Package stores will be permitted in the B-2 and B-3 zones with a conditional use permit possible for B-1 and B-4. Taverns will be permitted in B-2 and B-3 zones with a conditional use permit and are prohibited in all other zones. Since there will be some instances where the businesses will need Conditional Use Permits, the Planning Staff felt it would be beneficial for the board members to have the opportunity to talk to Officer Clere and also to the City Attorney, Warren Hopkins. Officer Clere and Warren Hopkins came forward to answer questions. Officer Clere stated that the state sets the number of alcohol licenses that can be issued based on the population of the County. In Murray, there will be 7 licenses granted for taverns and 8 licenses for package liquor stores which are chosen by the State. Currently, the City is looking at needing two Conditional Use Permits being issued for the package liquor store applications. Any bar/tavern that would wish to do business in Murray will also be required to get a Conditional Use Permit. Officer Clere added that although the City received 15 applications for package liquor stores, the State will only grant 8 licenses. She added this will not occur until after December 1st.

Officer Clere went on to say that once a business has their alcohol license, they will have 90 days to start selling alcohol or they will lose their license. If a building is under construction or there is some other valid circumstance, the 90 day period can be extended. Officer Clere clarified that once the license is issued, that person will need to come before the BZA as soon as possible to get the process started. Mr. Roberts stated that there would probably be several to review in January and February. Justin Crice stated that the deadline to be included on the December regular BZA agenda is November 26th; therefore, there will probably not be any cases brought before the board until January 2013 unless there is a special called meeting. This will mean that the applicant might have to wait 40-45 days after the state issues their license until the BZA hears their case. Scott Seiber asked if any of the tavern requests are already in

existence. Officer Clere stated that The Apple and The Keg are the only two businesses that are currently in existence and they will have to come before the BZA. She added that a tavern will not have to depend on the sale of food to meet a quota; they can just sell liquor by the drink. Once an establishment becomes a bar or tavern atmosphere, no one under the age of 21 will be allowed to enter. Mr. Seiber asked if Officer Clere could make recommendations to the board. Officer Clere said that she could not. Attorney Hopkins added that Officer Clere is also an officer for the city and she cannot be partial. Officer Clere also cautioned the board that the business should not have any different considerations than any other retail establishment. Mary Anne Medlock noted that it is possible that some of the businesses could get their state license and then not be approved by the BZA. Officer Clere agreed and added that she can hold the city ABC license until the BZA approves them. If the BZA does not approve a request, then the state will grant a license to another applicant that is next in line. Josh Vernon asked if they would face repercussions if a business lost their license because of the BZA. Mr. Hopkins said that he did foresee any repercussions; however, they need to be diligent in answering these requests and to definitively have the findings of facts established. The hours of operation for the sale of alcohol in the Ordinance are 6 a.m. until midnight. Officer Clere said that once the 15 quota licenses are locked in, unless someone loses their license or closes their establishment, it could be years before anything new comes along. Ms. Medlock stated that the board typically puts a review on conditional use permits; thus, they will be reviewed periodically. Officer Clere added that if the business is doing anything that they are not supposed to be doing, she will be taking care of 90% of those problems. Chairman Pounds stated that it will be very important that the staff let the applicant know that if a violation is made to their conditional use permit and it is revoked, that it also nullifies their liquor license. Mr. Roberts said that it could be stated as a recommendation to the ABC officer to revoke their license. He added that there are a couple of things that Officer Clere will be looking at from a sight standpoint; one is lighting and the other is signage. Officer Clere clarified that her job is to ensure public safety; therefore, a business has to have adequate lighting and parking and they can't have people hanging out in the parking lot. She can issue citations or fines and if they are not compliant with the Ordinance, she can revoke their license. Officer Clere explained that if a malt beverage business is within 100 feet of a school, church or daycare they can advertise in their windows, but cannot advertise outside of the establishment. Mr. Roberts included that the board will be looking at the lighting to see if there is too much lighting and if it is intrusive. Officer Clere concluded by saying that if the board members had any additional questions, they could call her at the police department. Attorney Hopkins told the board that if they had any questions for him, they could address them to Mike Pitman and they would be conversing back and forth frequently to address those questions.

Public Hearing: Dimensional Variance Application for an accessory structure in side yard – 1725 Keenland Drive – Michael Stom: Justin Crice used a Power Point presentation to show the property at 1725 Keenland Drive where Michael and Debbie Stom are requesting a variance to place an 18' x 21' metal carport along the east side of their home in a side yard. The Zoning Ordinance states that an accessory structure can only be placed in a rear yard. The Stom's have owned the property since October 1990. The existing house had a two car garage that has been enclosed for several years. The house is approximately 25 feet off the east property line. There is currently a small storage building that sits at the end of the driveway on the south side of the property that is in the rear yard. This would have to be moved in order for them to place the metal carport in the rear yard. The back yard is enclosed with a privacy fence that runs up to the storage building on both sides. Mr. Crice stated that in 2011, the adjoining property owner at 1723 Keenland Drive was approved for a similar carport in their front yard.

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

Michael Stom, 1725 Keenland, Murray was sworn in. Mr. Stom explained that there is a tree located around 6 feet behind the storage building; therefore, he wouldn't be able to move the building back any farther or locate the carport any further back than what Mr. Crice described. He's actually looked at several different options and the plan that he presented seems to be the best. Mr. Stom stated that the carport will be very similar to his neighbors except for that his will be beige to match the color of his house. Mr. Stom is requesting an 18' x 21' carport where his neighbor's is 21' x 21'. Mr. Seiber asked if two cars would fit under an 18 foot carport. Mr. Stom said that it would be tight. He would like to have a 21 foot but he does not think he will have the room. Mr. Stom stated that if he could move closer to the lot line he could probably put in a larger carport. Chairman Pounds said that it appears that the carport will be located approximately 100 feet from Keenland.

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

Chairman Pounds said in relation to all the neighboring houses, this proposal is in line with their backyards. Mr. Vernon agreed that from the aerial view, this proposal will be essentially in the backyard. He then asked at what point they would be opening the door for this situation to creep further and further down the street. Chairman Pounds said that each request will have to be looked at case by case to make that determination and when the motions are made, specific findings will have to be noted that will identify each situation. Mr. Crice said that this carport will require a building permit. A city building inspector will have to do an inspection and the carport will have to be anchored. Mr. Seiber said that he prefers the location to this proposed carport over the carport of the neighbors which sticks out in front of the house.

Scott Seiber made a motion to approve the Dimensional Variance application for Michael and Debbie Stom to place an accessory structure (metal carport) in the side yard area at 1725 Keenland Drive. This is the only reasonable location for a carport to serve the needs of the property owner and it will not be as objectionable as many other carports located in the community now, both that were approved before and after the fact. 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. This carport should be anchored to the point that it will resist high winds that are typical to this area and this procedure should be handled through the building permit process.

Mr. Roberts asked if there would be any consideration to the width of the carport. Mr. Seiber replied that he would be satisfied with any width that Mr. Stom chooses as long as the requirement for a five foot side setback from the property line is being met.

Josh Vernon seconded the motion and the motion carried with a 4-0 voice vote.

Public Hearing: Conditional Use Permit request for church related activities at 804 Story Avenue – Grace Baptist Church: Justin Crice used a Power Point presentation to show the property at 804 Story Avenue that Grace Baptist Church owns. They are currently in the process of building a new sanctuary at their 617 South 9th Street location. In 2002 the church constructed a new activities building on the east side of the property that had an attached canopy on the front of it. The canopy has been removed due to the construction of the new sanctuary building and the church would like to use it as a covered pavilion for church functions and place it on their vacant lot across the street at 804 Story Avenue. The canopy is approximately 34 ft. in width and 27 ft. in length. The church also plans to use the property for future parking. In an R-3 zoning district churches and church related activities are only allowed as a conditional

use. The property is approximately 70 feet by 150 feet. Mr. Vernon asked if the intent was to leave the canopy once the new church was constructed. Mr. Crice stated that the representatives had indicated that they would leave the canopy there for use as a pavilion for church related activities and picnics. He also said that some of the building committee members were in attendance so they would be available for questions.

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

Jimmy Hale, 2421 Baker Crossroad Drive, Murray was sworn in. Mr. Hale stated when they decided to tear the old sanctuary down, they felt that since the canopy was a gabled structure in good shape that they would try to utilize it somewhere else. He indicated that the plan is to pour a concrete slab and have steel poles holding the canopy up and use it as a pavilion for church picnics or other related outdoor activities. The canopy would be located on the east side of the property with parking around it. Mr. Hale said that they were open to any other suggestions as far as the placement of the canopy on the lot. When the new church is finished, they plan to come back before the board for parking. Chairman Pounds asked the intention as far as the parking lot surface. Mr. Hale said that the parking area would eventually be paved. Mr. Roberts said that the Planning Staff had talked to the representatives about the parking and they are aware that there is a 7500 square foot maximum parking area that can be paved without stormwater detention. This includes both properties on each side of the street. Mr. Vernon said that he did not foresee any problems with the church members going back and forth across the street since that was not a busy street. Mr. Roberts added that before they could start construction on the pavilion, they would have to present a site plan to the Planning Department and get a building permit. He then explained that this was brought before the board because this pavilion is to be on a separate lot and an accessory structure is not permitted solely on a vacant lot. There is also little house that is located on the corner of South 9th Street and Story Avenue that is currently being used by the Church as a family center.

Chairman Pounds asked if there was anyone that wished to speak in opposition to the permit. There was no one. Chairman Pounds closed the public hearing and turned it over to the board for discussion.

Josh Vernon made a motion to approve the Conditional Use Permit application for Grace Baptist Church to use the property at 804 Story Avenue for church related activities in an R-3 Zoning District based on the continued growth of the church and the need for additional parking. Approval of this permit is for the use of future parking and a covered pavilion for church activities. Approval is also contingent upon all city regulations being met. The property is currently appropriate for the use of church related activities and the adjacent property is already being used as that. This does not change the character of the use of that zone in any way. Scott Seiber seconded the motion and the motion passed with a 4-0 voice vote.

Review of Conditional Use Permit: 1413 Olive Boulevard – The Night Owl – Tung Dinh: Justin Crice stated that this was a one year review for The Night Owl's Conditional Use Permit. The board reviewed the permit in November 2011 and approved the continued use of the property since Mr. Dinh had made an attempt to keep his business in compliance with the initial conditions. Planning Staff has recently contacted Murray State University to see if there have been any issues with parking or other disturbances from Mr. Dinh's business in the last year. They indicated that there have been no issues that they were aware of. Staff has also attempted to contact Tammy Rogers that owns the building just to the east of Mr. Dinh's business and have had no response from her. The Planning Department has received no complaints during the past year regarding The Night Owl. Murray Police Department was contacted to see if they had any reports on the property during the past year. There were two instances; one was for noise complaint at 1:17 and one was a theft report at 3:21. Mr. Crice said they were not sure whether the

complaints were in the afternoon or the morning; however, they assumed that the noise was at 1:17 a.m. and the theft occurred at 3:21 p.m. Mr. Crice added that Mr. Dinh was in attendance if the board had any questions for him.

Scott Seiber stated that the board's objective is to see that conditions are being met for conditional use permits and it appears that Mr. Dinh is in compliance; therefore, he does not feel it would be necessary to review this on an annual basis. Mary Anne Medlock said that she thought there should always be some type of review, but she agreed that it didn't have to be annually. Attorney Pitman suggested that the staff report back to the board if there was an issue and at that time they could review it again.

Scott Seiber moved that The Night Owl is currently in compliance with the conditions placed on the conditional use permit. Mr. Seiber stated that Planning Staff has been directed to monitor the situation and if needed can set a future review of this conditional use permit. Josh Vernon seconded the motion and the motion carried with a 4-0 voice vote.

Questions and Comments: Mr. Crice stated that there will be a special call meeting on November 27th at 4:30. It will be to review an accessory structure on a side yard setback variance and a front yard setback variance at 106 South 12th Street for PAJCO, Inc. out of Cape Girardeau, Missouri. Mr. Seiber asked when would be the earliest that the BZA would see anything pertaining to the Conditional Use Permits for liquor licenses. Mr. Crice said that it would be probably after the first of the New Year. Chairman Pounds asked if someone could apply for their Conditional Use Permit before they get their license. Mr. Roberts said because of the timing of the second reading of the Ordinance at the City Council, this would not be an option. He added that there is also a time table for a public notice to be in the paper announcing the public hearing at the meeting; therefore, these conditional use permits will not be able to be heard at the December meeting.

Adjournment: Scott Seiber made a motion to adjourn. Josh Vernon seconded the motion and the motion carried unanimously. *The meeting adjourned at 5:40 p.m.*

Chairman, Justin Pounds

Recording Secretary, Reta Gray