

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, DECEMBER 19, 2012
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, December 19, 2012 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5th Street.

Board Members Present: John Krieb, Mary Anne Medlock, Josh Vernon, Justin Pounds and Brad Darnall

Board Members Absent: Scott Seiber

Also Present: Candace Dowdy, Justin Crice, Reta Gray, Jennifer Tolley, Ed Pavlick, Mike Pitman, Hawkins Teague, Cheryl Burkett, Bernie Prince, Steve Lamb, Bobby Deitz, Keith Boeller, Mr. Johnston, Officer Clere and public audience

Chairman Krieb called the meeting to order and welcomed all guests and applicants. Chairman Krieb asked if there were any changes, additions or deletions to the November 14, 2012 regular meeting.

Justin Pounds made a motion to accept the BZA minutes from November 14, 2012 regular meeting as presented. Josh Vernon seconded the motion and the motion carried unanimously.

Chairman Krieb asked if there were any changes, additions or deletions to the November 27, 2012 BZA special meeting.

Mary Anne Medlock made a motion to accept the BZA minutes from November 27, 2012 special meeting as presented. Josh Vernon seconded the motion and the motion carried unanimously.

Public Hearing: Conditional Use Permit request for outdoor storage of merchandise – 807 North 12th Street – Murphy Oil: Justin Crice used a Power Point presentation to show Murphy Oil located at 807 North 12th Street. They recently applied for a retail beer license and upon inspection of the property to ensure zoning compliance staff realized that Murphy Oil had never applied for a conditional use permit to allow outdoor storage of merchandise. They currently have numerous automotive product displays on the exterior of the building as well as an ice box and propane tank displays. They were informed of the zoning violation and were given the option to either bring the merchandise inside the building or apply for a conditional use permit. Murphy Oil did receive their state and local ABC license and is selling malt beverage products. Mr. Crice stated that the Planning Staff had spoken to the Fire Marshal and found out that businesses are supposed to have 10 feet of clearance on each side of the door and according to the photos shown they are clearly not in compliance since they have merchandise sitting approximately 4 feet from the door. He added that the store manager from Murphy Oil was in attendance. Ms. Dowdy stated that Murphy Oil had chosen to apply for a Conditional Use Permit instead of removing the outdoor merchandise. She added that Murphy Oil had never been before the board for a Variance or a Conditional Use Permit, but they have previously been contacted on several occasions concerning their signage. Ms. Dowdy stated that when the businesses make application for liquor license, part of the Planning Staff's duty is to make sure that they are up to the zoning regulations. While making their inspection of these applicants, they have noticed several violations. Ms. Dowdy pointed out the current signage at this location. She stated that they have gas prices on the canopy, signage above the pump tanks and also signage in the shape of a Coke bottle. She added that at any given time you can go by there and find a different advertisement displayed as signage. There are two islands on both the north and south sides of

the building displaying the same signage. There are also displays set up on the inside islands with seasonal merchandise.

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

Cheryl Burkett, 304 South 6th Street, Apartment B, Murray was sworn in. Ms. Burkett stated that she had been the manager for Murphy Oil in Murray for approximately 6 years. Ms. Burkett said that all of the signage and outdoor storage that is displayed at the Murphy Oil in Murray is a standard plan at all Murphy's Oil locations. The Murphy Oil in Murray is the one of four that is this size. There is a merchandiser that delivers a plan-a-gram to each of the locations that includes their new display for the month. Ms. Burkett added that the pump toppers are also changed out frequently. She said that the Coke signage is already scheduled to come down. Ms. Burkett concluded that Murphy Oil actually has additional signage that they would like to display; however, they are willing to work with the City and remove some of their signage.

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

Brad Darnall addressed that the business was out of compliance on their signage. Attorney Mike Pitman stated that since the item being discussed at this time was the outdoor storage of merchandise, Murphy Oil would have to come back at a later time with a variance request for additional signage. Ms. Dowdy stated that there is nothing in the sign regulations that addresses pump toppers. Some may call them signs and some may call these types of items a display of merchandise. Mary Anne Medlock said that even though the discussion of signs is not what was being addressed at the current time, she did feel that the motion should included that something be presented to the board for approval in the future as far as their signage. Ms. Dowdy asked for Mr. Pitman's opinion on this matter. Mr. Pitman once again said the matter that was before the board at this time was the request for a Conditional Use Permit for the outdoor storage of merchandise and if future sign matters came up, Planning Staff should then notify Murphy Oil to ask them to come into compliance with their signage or to come back before the board to apply for a variance. The signage and outdoor storage of merchandise are two separate items. Justin Pounds agreed that it is hard to distinguish what is outdoor storage of merchandise and what is signage and with no regulations addressing this, it puts the board in an awkward position and that he did not feel comfortable voting on the issue as it is. Ms. Dowdy said that she thought the Board could say that they did not want to see any additional signage unless Murphy Oil came before the Board. Mr. Pitman said that the Board needed to be careful in making advisory opinions in a motion concerning the signage. He added that the Board should address the outdoor storage and if the Planning Staff felt the signage should be addressed, that should be at another time. Josh Vernon asked if Murphy Oil would be allowed a certain amount of square footage for outdoor storage. Ms. Dowdy said that has been looked at before and gave examples of other businesses that had specific locations noted in their Conditional Use Permits where there were allowed to store their outdoor merchandise. Ms. Dowdy added that in some of these small businesses there seems to be more outdoor merchandise because they are making room inside for the malt beverage that they are going to be selling; thus, pushing some of the indoor merchandise outside. Mr. Vernon asked if the Fire Marshal had certain flammable items that were prohibited to being stored outside. Ms. Dowdy stated that there are periodic inspections made by the Fire Marshal to make sure these businesses are in compliance. The drive aisles are on the east and west sides of the building; therefore, merchandise should be limited to the north and south sides in order to keep the drive aisles clear and in addition merchandise must be kept at least 10 feet away from each side of the door. Mary Anne Medlock was concerned with merchandise being stored between the pumps. Justin Pounds commented that when he

has visited this business everything has seemed orderly and he would be more comfortable with a limited amount of square footage being put on this request and as long as they are not violating any other regulations or ordinances, let them put the merchandise where they wish. Ms. Medlock and Brad Darnall thought that the location that Murphy Oil chose to store their outdoor merchandise might not be desirable and they would like for the businesses to look neat, orderly and consistent. Ms. Dowdy referred to previous Conditional Use Permits where the businesses were allowed a certain amount of parking spaces for their outdoor storage. Ms. Medlock stated that those circumstances do not match this one.

Josh Vernon made a motion to approve the Conditional Use Permit request made by Murphy Oil USA, Inc. to allow outdoor storage of merchandise at 807 North 12th Street within the boundaries defined by drive aisles, pedestrian access ways, and any regulations in regards to fire safety and accessibility on the north and south sides of the building remaining within the regulations of the Ordinances and laws. This conditional use is in accordance with the use of this type of business and it 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.

Josh Vernon amended his motion to approve the Conditional Use Permit request made by Murphy Oil USA, Inc. to allow outdoor storage of merchandise at 807 North 12th Street within the boundaries defined by drive aisles, pedestrian access ways, and any regulations in regards to fire safety and accessibility on the north and south sides of the building remaining within the regulations of the ordinances and laws. There are restraints not to go past the north and south ends of the current building. This variance is in accordance with the use of this type of business and it 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. *This motion was removed from the table when Josh Vernon withdrew his motion and was not voted on.*

Ms. Dowdy stated that she was unclear as to where the board was approving the outside storage. She said that it would be easier for Planning Staff to watch for violations if the storage was limited to the area next to the building while maintaining the 10 foot clearance per fire code. Mr. Pounds said that he would be comfortable with tabling this issue for further discussion. Josh Vernon withdrew his motion.

Brad Darnall made a motion to approve the Conditional Use Permit request made by Murphy Oil USA, Inc. to allow outdoor storage of merchandise at 807 North 12th Street. This storage will be on the north and south sides of the building, up against the building, is not to extend past the length of the building and must be in compliance with the Fire Marshall. Josh Vernon seconded and the motion carried with 4-0 voice vote. *Justin Pounds abstained from voting.*

Public Hearing: Conditional Use Permit request for additional outdoor storage of merchandise – 808 North 12th Street – Kroger: Justin Crice used a Power Point presentation to show Kroger Store #435 and their fuel center located at 808 North 12th. When Kroger made an ABC application for a retail beer license, Planning Staff reviewed their zoning compliance and their conditional use permit for outdoor storage of merchandise and at that time found that Kroger was not in compliance on the CUP that was granted on February 18, 1998. The CUP stated no more than ten parking spaces (9' X 18' which would allow them 1620 square feet) were to be used for outdoor storage. Over the years, merchandise has gravitated to the store front and out of the parking lot. This merchandise had included patio furniture, propane storage tanks, drink machines, seasonal Christmas trees, seasonal flowers, and perennials. The Kroger fuel center constructed in 2004 also maintains outdoor merchandise of windshield washer fluid,

antifreeze, and miscellaneous car care products. Kroger has requested to continue using their storefront for outdoor storage by changing their existing CUP. The space they are requesting to be designated for merchandise is a total of 924 square feet and runs against the store front. Planning Staff prefers this request over the previous outdoor storage location. The sidewalk in front of Kroger is 23 feet deep. The applicants are also requesting to place merchandise around the fuel center with a total of 143 square feet of space. Ten feet clearance on each side of the door is required per the Fire Marshal. Mr. Crice stated that the Murray Kroger manager was there to answer questions. Kroger did receive their state and local retail beer license and is currently selling retail beer.

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

Bernie Prince, 310 Ernstberger Lane, Murray was sworn in. Mr. Prince stated that he was newly assigned to the Murray Kroger store and he was not aware of the 10 foot clearance by the doors of a business; however, he stated that the merchandise would be moved out of the area between the front doors the following day. Mr. Prince said that they would like to be able to store seasonal items under their canopies and against the buildings and that giving up the 10 parking spaces that they were granted on the previous CUP would not be an issue. Chairman Krieb asked Mr. Prince if he envisioned using more of the space at the Kroger store at one time and rotating that space at the fuel center at another time. Mr. Prince said no. The plan is to use the proposed square footage for each site as the request was stated. Ms. Dowdy stated that this request at the fuel center is a little different from the Murphy Oil request since customers do not go in the Kroger fuel center building and purchase merchandise. She added that Kroger had submitted a site plan (*Exhibit A*) and their current displays are somewhat different from that proposal. Mr. Prince stated that they are requesting that merchandise at the fuel center come off the front corners of the building and wrap around the north and south sides.

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

Mr. Vernon said that he thought that the two 30 square foot front areas shown in front of the Kroger fuel center on the site plan should be cut from the proposal in order to be consistent with the request from the previous applicant; therefore, granting them only 83 square feet for outdoor storage.

Josh Vernon made a motion to approve the Conditional Use Permit request made by Kroger Store #435 to allow 924 square feet of outdoor storage of merchandise at the store location at 808 North 12th Street and 83 square feet for the Kroger fuel center on the north and south ends of the building. Both locations are to comply with the requirements mandated by the Fire Marshal. The findings are that these stipulations are within the purpose and use of the business as it does 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 CUP will rescind the 10 parking spaces that were allowed for outdoor storage with the CUP granted on February 18, 1998. Mary Anne Medlock seconded the motion and the motion carried with a 4-0 voice vote. Justin Pounds abstained from voting.

Public Hearing: Conditional Use Permit request for additional outdoor storage of merchandise – 411 South 12th Street – Huck's (Martin & Bayley, Inc.): Candace Dowdy used a Power Point presentation to show the Huck's Convenience Store located at the intersection of South 12th and Sycamore Street. Huck's is located in a B-4 zone. The applicant was granted a conditional use permit to allow outdoor storage of merchandise in September 2010. At that time they requested to have an ice box

and a propane tank display in front of their store. Since that time Huck's has periodically displayed additional merchandise outside their store and Planning Staff has informed them on several occasions that they were in violation of the conditions placed on their permit and that the merchandise had to be removed. They did comply by removing the merchandise. Huck's is now requesting to place bottled water and a seasonal display of mulch/ firewood outside of the building. Ms. Dowdy stated that Huck's had also applied for a retail malt beverage license and during the inspection, Planning Staff noticed the additional outdoor storage of merchandise. They were told that they could bring the merchandise to the inside of the store and comply with the previous CUP or they could apply for an additional CUP to expand the area or use of the initial CUP. There is a small landscaped area near 12th Street where most of the additional merchandise is being stored. Ms. Dowdy stated that they are requesting an additional 75 square feet in front of the store and also the green space that is near 12th Street for seasonal merchandise such as mulch or firewood.

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

Steve Lamb, 3090 Wrather Road, Almo, Kentucky was sworn in. Mr. Lamb reviewed the pictures that Ms. Dowdy had presented. He stated that the firewood is in bundles and stored on the front of the building close to the door along with other merchandise. Mr. Lamb pointed out the green area where the mulch is stored. He stated that at times the mulch would be there up to three weeks before they sold out. Ms. Dowdy asked if there were any issues with tanker trucks coming through the area where the mulch is stored. Mr. Lamb replied that there were no issues. He added that they tried to keep everything looking tidy and straight. Chairman Krieb asked if there was room to store the mulch on the north side of the building. Mr. Lamb replied there probably wasn't adequate room. The mulch is delivered on pallets that are either 4 x 4 or 4 x 5 making it difficult to find an area that is suitable.

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

Ms. Dowdy said that they had received one phone call from an adjoining property owner, Murray Bank, and they did not have any problems with the request. Josh Vernon stated that this request was different to him because the area is near the street and he does not think it is appropriate. Chairman Krieb explained that a motion could approve a portion of the request and deny another portion. Ms. Dowdy stated that she did not think they wanted to start a habit of allowing businesses to have all of their sidewalks covered with merchandise.

Josh Vernon made a motion to approve the Conditional Use Permit request made by Huck's to allow additional outdoor storage of merchandise at 411 South 12th Street as shown in the proposed diagram, the additional 75 square feet of space in front of the store and space to the north side of the entrance door that does not take up more sidewalk space than is shown on the diagram south of the door following the requirements of the Fire Marshal for clearance on the exit. This is based on the findings that this is in accordance with the business model for gas stations. This conditional use 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 and it carried with a 5-0 voice vote. Justin Pounds recused himself from the next item on the agenda at 5:55 p.m.

Public Hearing: Dimensional Variance request for an eight and a half (8.5) foot front yard setback on an accessory structure and an additional thirty (30) foot entrance – 106 South 12th Street –

PAJCO, Inc.: Ms. Dowdy used a Power Point presentation to show the property at 106 South 12th Street that Keith Boeller is proposing to purchase and construct a Rhodes 101 Convenience Store that will also sell gasoline. Previously the board reviewed and approved an accessory structure in a side yard for PAJCO, Inc. and at the same time the request for a front setback on a canopy was denied. The applicants have revised their site plan significantly from the special called meeting on November 27, 2012. The new site plan shows the parking and the traffic flow in and out of the property. The property is located in a B-2 (Highway Commercial) zoning district with a convenience store being allowed as a permitted use. There is B-4 property to the east and B-2 surrounds the property on all other sides. This property has road frontage on 12th Street and 13th Street. The primary entrances will be on 12th Street where one entrance will be 50 feet and the other planned entrance would be 30 feet. Planning Staff informed the applicant the additional 30 ft. entrance would need to be considered as a variance. The site plan shows the convenience store to be located on the south end of the property with a canopy over the gas pumps on the north side. Because of the unique shape of the lot and the topography of the land the canopy is being shown 41.5 feet off the front property line; thus requiring an 8.5 foot front yard setback. As per the site plan the support column of the canopy will be directly on the 50 foot front setback line with the overhang projecting out into the setback; therefore, there will be no obstruction of visibility at ground level. The principal structure will be 64 feet off the front property line. Ms. Dowdy showed photos that Mr. Deitz and Mr. Johnston have provided of other similar businesses along 12th Street for comparison to this request. Ms. Dowdy noted that the Pockets at 12th and Chestnut was granted several variances before their construction. At the previous meeting there was discussion as to where the tanker trucks would enter and exit the property. Mr. Roberts went out to the proposed site prior to the meeting and noted that 13th Street is only 21 foot wide and towards the Walgreen's property, the width increases around 8 feet. At the time, he saw a delivery truck unloading at Walgreen's. He did not know how the truck entered the property; however, it was speculated that the truck would exit the property on 13th Street and then make a right onto Main Street. There are businesses that are grandfathered in along 13th Street that have very little setback. These are located in the B-2 zone and have been that way for a number of years. There are also two residences towards Poplar Street. Ms. Dowdy concluded that there are sidewalks from Main Street across Walgreen's property and Planning Staff will ask PAJCO, Inc. to construct sidewalks across this proposed project as well.

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

Bobby Deitz, 645 Swift Road, Kirksey, Kentucky was sworn in. Mr. Deitz stated when they were denied the front setback for the canopy, they went back to work on another proposal. They did a full site layout and tried to make everything fit and still comply with the requirements of what Rhodes felt they had to have in regards to circulation, pump accessibility, and landscaping. The plan they came up with shows the canopy with an 8.5 overhang into the required setback. Mr. Deitz said that in regards to the circulation of the transport truck, the truck will enter from 12th Street, circle through and exit off 13th Street, and go south to Poplar to the light to get back on 12th Street. Ms. Dowdy told Mr. Deitz that that would be their least desirable way for the truck to exit because of making the turn on Poplar. She stated that the intersection on Poplar is more residential. Ms. Dowdy stated the City's preference would be for trucks to exit onto 13th Street going north towards Main Street. Mr. Deitz said that they would work with the City on this item. He added when he was visiting Domino's, he noticed a semi making a delivery. He said that these truck drivers amaze him as this particular driver backed across 5 lanes of traffic on 12th Street with no problems. He said that Dunkin' Donuts deliveries are made from Sharpe Street and the truck driver backs in there blocking the entire street for only seconds. Semi-truck drivers can put those trucks into tight spots. He said that it might be a minor inconvenience if you happened to be there at the same time they were getting a delivery; however, in 10 or 15 seconds they've already got the truck out of the way. Mr. Deitz stated that they think that delivery trucks will not be an issue because they will be

trying to make deliveries at non-peak traffic times because it will be within their best interest also. Mr. Deitz said that they are showing a 24 foot entrance on 13th Street; however, they will probably be widening that.

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

Josh Vernon said that it looked like they have made every effort to make this proposal work. He said that he went back and looked at 12th Street after the last meeting and learned that a large percentage is B-4 zoned. He was concerned with uniformity along 12th Street at the last meeting and since then he found that a smaller amount is actually B-2; therefore, the argument that he had at the previous meeting didn't have as much strength as he thought it once did. Chairman Krieb commented that the photographs that were presented by Mr. Deitz and Mr. Johnston also helped to convey the entire concept of what they have envisioned.

Brad Darnall made a motion to approve the request by PAJCO, Inc. for an 8.5 foot front setback variance on an accessory structure and an additional 30 ft. entrance based on the fact the lot is unique in shape and with the topography of the land it does not allow the property owner to develop the property meeting all zoning regulations. The property owners will complete the sidewalks as directed by Planning Staff on 13th Street. 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 and the motion carried with a 4-0 voice vote. Justin Pounds re-entered the meeting at 6:17 p.m.

Questions and Comments: None.

Adjournment: Brad Darnall made a motion to adjourn. Josh Vernon seconded the motion and the motion carried unanimously. The meeting adjourned at 6:18 p.m.

Chairman, John Krieb

Recording Secretary, Reta Gray