

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, JANUARY 16, 2013
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, January 16, 2013 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, Scott Seiber and Brad Darnall

Also Present: Candace Dowdy, Justin Crice, Reta Gray, David Roberts, Jennifer Tolley, Mike Pitman, Officer Kendra Clere, Officer Todd Clere, Peyton Mastera, Jim Foutch, Bobby Deitz, Rick Johnston, Phil Moore, Terry Strieter, Sarah Fineman, Linda Scott, Troy Stovall, Mike Hermann, David Taylor, Darren Yates, T.C. Dinh, Jeff Grunst, Boone Chambers 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 December 19, 2012 regular meeting. Changes were noted.

Justin Pounds made a motion to approve the amended BZA minutes from December 19, 2012 regular meeting. Brad Darnall seconded the motion and the motion carried unanimously.

Public Hearing: Dimensional Variance request for a four foot side and rear setback for an accessory structure (metal carport) – 414 North 5th Street – Jim Foutch: Candace Dowdy used a Power Point presentation to show the property owned by Jim Foutch at 414 North 5th Street. Ms. Dowdy stated that Mr. Foutch would like to place a metal carport in his rear yard but in order to do that he would need a five foot side and rear setback variance in order to comply with the ordinance. Initially Mr. Foutch had requested a five foot side and rear setback, but has since decided that he will only need a four foot variance. The property is located in an R-3 (Multi Family Residential) zone and is surrounded by R-3 Multi-Family Residential to the North, South and West, and B-3 (Central Business District) to the East. Ms. Dowdy stated that Mr. Foutch had indicated that the purpose of the carport is to provide shelter or covering for his RV. The size of the proposed carport will be 12 feet x 26 feet. Mr. Foutch has a fourteen foot driveway along the north side of his house. There is an outbuilding in the back yard that will remain in the same location.

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

Jim Foutch, 414 North 5th Street, Murray was sworn in. Mr. Foutch stated that he had spoken to the neighbor to the north of his residence and that he did not have any problem with him putting up a metal carport. He added that there is no one living on either side of the back of the property so he didn't see how it could bother anyone. Mr. Foutch said that the proposed carport would be the same color as the outbuilding so that it would match. He also stated that since the RV has been sitting outside in the weather, it has suffered quite a bit of weather related damage that is going to cost him between eight and ten thousand dollars to have repaired. Mr. Foutch said that he plans to store his RV under the canopy once he gets it back from the repair specialist in Mayfield to prevent this kind of damage in the future.

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. Josh Vernon asked if there had to be a firewall for this structure. Ms. Dowdy stated that she

did not think the firewall protection would be necessary in this situation since the carport would be next to an outbuilding instead of a principal structure.

Justin Pounds made a motion to approve the Dimensional Variance request made by Jim Foutch for a four foot side and rear setback variance for an accessory structure at 414 North 5th 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. Brad Darnall seconded the motion and the motion carried with a 6-0 voice vote.

Compatibility Hearing: Commercial Planned Development Project located at 201 and 203 North 12th street – Jimmy John’s Gourmet Sandwiches: Candace Dowdy used a Power Point presentation to show the properties located at 201 & 203 North 12th Street and 1204 Olive Street. Mr. Mike Noonan is proposing to purchase the properties and construct a 3600 square foot building that would consist of two 1800 square foot tenant spaces. Jimmy John’s Gourmet Sandwiches will be located on one side and the other side will be used for retail or professional office space. This project will be reviewed as a Commercial Planned Development Project since one of the tenant spaces will be a restaurant with a drive-thru. The property is zoned B-4 (Medium Density Business District) and is surrounded by B-4 to the North & East, B-2 (Highway Commercial) to the South and R-3 (Multi-Family Residential) to the West. The site plan shows entrances off North 12th Street and Olive, green space surrounding the project and a patio area on the east side of the building. If this project is approved, a minor subdivision plat consolidating all three lots will need to be submitted to the Planning Department for review and approval prior to any permits being issued. Ms. Dowdy stated that Bobby Deitz and Rick Johnston were here to represent Jimmy John’s if there were any questions. She added that this is a compatibility hearing to determine if the project is compatible to the area. Ms. Dowdy stated that there was some discussion the previous night after the Planning Commission meeting by some of the residents as to their concerns regarding this project. She also has received some e-mails from other residents with concerns about the entrance located on Olive and the additional traffic that could be created on Olive Boulevard. The e-mails also addressed the issues that they deal with on a daily basis from McDonald’s which has an access on North 13th. They are experiencing additional traffic, pedestrians and trash on Olive Boulevard and have concerns that another restaurant will only add to this. One of the residents brought Ms. Dowdy a photo of a traffic accident that had occurred that day at Olive and 13th. They indicated to Ms. Dowdy that this is a common occurrence at that location and they were concerned that if additional traffic is generated on Olive from another restaurant that there will be additional accidents. Ms. Dowdy explained that Olive Boulevard is a thru street and North 13th has a stop sign. *(The e-mails were passed around for the board members to review and entered as Exhibit A.)* Scott Seiber asked if the tenant side of the building could be a restaurant as well. Ms. Dowdy stated that Mr. Noonan is aware that if the use that is presented for the other side is not a permitted use for the B-4 zone, that he will have to come back before the board for a conditional use. She added that to her knowledge, they are not looking at putting another restaurant or eating establishment there.

Bobby Deitz, Engineer for BFW came forward. Mr. Deitz stated that Mr. Noonan had sent his apologies for not being at the meeting, but he had a family matter that had come up. Mr. Deitz said that the property is .66 acres. As part of the PDP process, they are trying to work with Planning Staff to comply with all the ordinances and all the conditions that have to be met as part of the Conditional Use Permit for a restaurant to be located here. The location of the drive-thru is located on the south side of the building and is designed to direct the traffic back to 12th Street. Mr. Deitz said that about 50 percent of Jimmy John’s clients will be drive-thru. Mr. Deitz noted that they are not necessarily requiring customers to use Olive Street; however, they do feel that the Olive access is necessary and that it would be the safer route to get back onto 12th Street. They also feel that 12th Street will be utilized more during non-peak traffic

times. Mr. Deitz said that they are not under the opinion that people use Olive Street as a thru street to get to 12th Street. They feel that the people that use Olive will be the residents or university traffic. Mr. Deitz added that it looks like there could be up to four cars stacked on Olive at the intersection and maybe five stacked on 12th. He said that customers might have to wait until the light changes before they pull out on 12th or Olive. Scott Seiber stated that there are peak times where you are going to see back-up on Olive and he can foresee that becoming a serious problem. He said people are not going to wait for the red light but instead they are going to take Olive Boulevard for a thru-way. Mr. Seiber said that you want a business to thrive, but if it has traffic issues, customers will not be happy. Josh Vernon asked if customers entered off Olive, would they still be able to access the drive-thru. Mr. Deitz replied that the menu board is near the southwest corner of the building and they would hope that the customers would circle the building to go to the drive-thru. The intent is to put markings around the building to direct the flow of traffic. He added that Jimmy John's is not a huge restaurant chain like McDonald's, but it is more comparable to a Subway where there is not as much traffic. Mr. Deitz said that probably the worst scenario that Murray has on a corner lot is the Shell station at 12th and Chestnut and customers seem to manage quite well.

Chairman Krieb asked if there were any residents of the neighborhood that would like to come forward and speak.

Phil Moore, 1303 Olive Boulevard, Murray came forward. Mr. Moore stated that he is not only a neighbor, he is also a business owner, member of the Chamber and a realtor and he is certainly pro-growth for Murray. Mr. Moore said that a lot of his neighbors had begun giving him feedback the previous day when they saw stakes on this property. Mr. Moore contacted Ms. Dowdy and found out what was being proposed and his few phone calls turned into numerous e-mails from the surrounding neighbors. Their main concern is not that the business is a restaurant, but that there is an entrance on Olive. He said that the site plan looks good on paper; however, both the entrance on 12th and the entrance on Olive are extremely close to the traffic light. Mr. Moore stated that the photo that was circulated of the accident that occurred at Olive and N. 13th is only one of the many that are at that location and they feel that there will be even more accidents if this restaurant with a drive-thru is allowed with the entrance on Olive. Mr. Moore said that there is an overwhelming concern and he has not had any positive feedback. Mr. Moore said that Olive Boulevard is in fact a thru-street and that he could verify that from the trash that he is picking up daily. He concluded that he is not only speaking for himself, but as a messenger for his neighborhood. Mr. Seiber told Mr. Moore that without an access off Olive, a business such as this wouldn't work. He continued that any business would be an advantage to the city because of revenue in taxes. Mr. Seiber stated that he previously lived in that neighborhood and he can understand the concerns. He added that he sometimes uses Olive as a thru-street himself as he tries to avoid 12th Street during rush hour. Mr. Seiber explained that this is a Compatibility Hearing and their job as board members is to decide if the proposal is compatible with the surrounding area and that there are probably people on this board that are of a mind that it is compatible; it may not be the best case scenario for the residents on Olive Boulevard but if you ask the question is it compatible, yes it probably is compatible.

Terry Strieter, 202 North 13th Street, Murray came forward. Mr. Strieter said that he and his wife, Sara Fineman, own other houses in the neighborhood besides the one where they reside. Mr. Strieter added that this is basically a residential area and a high impact business could have enough business traffic that it could change the character of the neighborhood and that his concern is the gradual encroachment of businesses along Olive. Mr. Strieter said that in his opinion, this proposal is not compatible to the surrounding area. Chairman Krieb explained that the entire property is in the B-4 business zone even though it abuts a residential zone. Ms. Dowdy reminded the board that the property just to the south, Grey's Properties and Global Mortgage is in a B-2 zone and that if someone decided to tear that building down and build a restaurant, it would not have to come before the BZA because that would be a permitted

use. Ms. Dowdy noted that during the last update to the Comprehensive Plan, there was some discussion on whether to move the B-4 line back to the west to 13th Street and incorporate the residential area. Some of the committee members liked the idea and some didn't; thus, they decided to leave it as it is on North 13th Street.

Linda Scott, 1315 Olive Boulevard, Murray came forward. Ms. Scott stated that her main concern with the proposal is the traffic; however, she also has a concern about the amount of green space shown on the site plan. She did not think that space was adequate for the area that abutted the residential area. Brad Darnall assured Ms. Scott that the current BZA members push green space in all similar projects especially when it adjoins a residential area. Mary Anne Medlock agreed that the board works closely with the developers to make sure that there is adequate green space. Ms. Scott stated that she did not feel that the project was compatible with the neighborhood or community with that little amount of green space and would like for them to reconfigure the amount of green space. Ms. Scott concluded that the residents that live behind Kentucky Fried Chicken had suffered because of problems with the trees and the fencing and she thought there should be a compatible way to where businesses could abut residential areas without devaluing their homes.

Josh Vernon made a motion that the proposed project for Jimmy John's Gourmet Sandwiches is compatible to the area. Brad Darnall seconded. The vote was 3-3; therefore, the motion failed.
Scott Seiber, Mary Anne Medlock and Justin Pounds voted no.

Compatibility Hearing: Proposed residential planned development project on Lowes Drive (between North 16th Street and Hwy 121 Bypass North) – Troy Stovall, Developer: Justin Crice used a Power Point presentation to show the property on the south side of Lowes Drive, between North 16th and Hwy 121 Bypass North where Troy Stovall is proposing the construction of a Residential Planned Development Project. The property is currently in the process of being surveyed and is zoned B-2 (Highway Commercial). Directly adjacent to this property to the north is R-4 (Multi-Family Residential), with B-2 in all other directions. Mr. Stovall recently purchased the 4.435 acre tract of land that is south of The Chase (formerly Murray Place). The property was formerly used as a rock quarry and was rezoned in February 2008 from R-4 to B-2. A large detention pond (which services The Chase and a portion of the Lowes and North 16th area) is located in the Northeast corner of the property that restricts access to that portion of the property. Mr. Stovall has provided a potential layout of a proposal to construct 60 one-bedroom apartment units on the lot. This will have to be reviewed as a Residential Planned Development Project because of the number of units and the property being zoned B-2. There is a large drop off on the property. Mr. Stovall intends on grading the property and building it up so that it is suitable for development. The site plan shows only one 30 foot entrance/exit with access off Lowes Drive. The one drive aisle is 24 feet wide and encircles the development. The Fire Marshal and Sanitation Department have reviewed the site plan and they are ok with the layout. Mr. Crice stated that Mr. Stovall is present to answer questions from the board members. Ms. Dowdy explained that before the property was rezoned, it was R-4 (Multi-Family Residential). Some of the business owners on Hwy 121 wanted the property rezoned because they were looking at putting a rear access off Lowes Drive to their properties. While the property was zoned residential, the access was not allowed for commercial traffic to cross through a residential zone. Ms. Dowdy added that the detention area that is currently on the property will be expanded and will continue to be used by The Chase. Mr. Seiber asked if there were any concerns with only one entrance/exit to the development. Ms. Dowdy said that the proposal had only gone before the Planning Commission the previous night for an advisory meeting. Ms. Dowdy expressed that some of the Commissioners were very concerned about the accessibility to the developments in an emergency situation. Chairman Krieb said that the circular motion around the development appeared to be a better choice than one entrance that went straight in and out. Mr. Seiber added that there is a development to the west with only one entrance and it has a circular motion throughout the development.

Scott Seiber moved that the request by Troy Stovall for this tract of land on Lowes Drive is compatible. Justin Pounds seconded the motion and the motion carried with a 6-0 voice vote.

Public Hearing: Conditional Use Permit request for outdoor storage of merchandise – 717 South 12th Street – Dollar General: Justin Crice used a Power Point presentation to show the new Dollar General Store located at 717 South 12th Street. (There is currently another Dollar General Store in the Olympic Plaza at 506 N. 12th Street.) Each of the Murray Dollar General's has applied for retail beer licenses. The Dollar General on North 12th Street has a Conditional Use Permit for their outdoor storage of merchandise; however, upon reviewing the zoning compliance for the Dollar General at 717 South 12th Street it was noted that this store does not have a Conditional Use Permit for outdoor storage of merchandise, specifically an icebox outside the building. The manager at Dollar General indicated that they would like to keep the icebox and possibly place a propane tank display and a Redbox movie kiosk outside the building; thus, they are applying for a CUP at this location. Dollar General also has some shopping carts in front of the store as well as some other merchandise they roll in and out on a daily basis. This property is located in a B-2 (Highway Business) zoning district with B-2 surrounding it to the North, South & West, and R-2 (Single Family) zoning to the East.

Ms. Dowdy stated that before this particular Dollar General was constructed, she had spoken to the owner of these two Dollar General stores and at that time had explained that there was to be no storage of outdoor merchandise at this location unless they applied for a Conditional Use Permit. (This had been noted on the building permit.) The gentleman that is currently the manager of the south side location was formerly the manager of the north side location. Ms. Dowdy added that the north side Dollar General's CUP stated that they were allowed an icebox, up to four roll out carts that were to be taken in and out on a daily basis, and required to meet the fire codes around the front door. Chairman Krieb stated that to his understanding, the front door should have a 10 foot clearance on either side of the doorway and that the pictures did not appear to show that 10 foot fire code clearance. Brad Darnall asked Ms. Dowdy if it would be possible to have the Fire Marshal explain the fire codes to the BZA as they pertain to outdoor storage and clearance around doors. Ms. Dowdy said that she would look into that. She added that typically if the Planning Staff had questions on something they would contact the Fire Marshal. Justin Crice stated that he thought there was some confusion to the code. He stated that he had spoken to the Fire Marshal after the previous meeting and he understood that combustible material could not be closer than 10 feet from the doors on each side. Brad Darnall agreed that the board members needed clarification of the code.

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

Mike Hermann, 1576 Churchill, Clarksville, Tennessee was sworn in. Mr. Hermann is a District Manager for Dollar General. He began by saying that if they are not allowed to have outdoor storage, they would remove it. He stated that the Dollar General stores are given a plan-a-gram monthly for their outdoor storage and currently the Murray store on South 12th has an ice machine, displays that are rolled in and out of the store daily and shopping carts on the outside along the front of the store. They would like to add propane tanks and possibly a Redbox movie kiosk to their outdoor storage. Justin Pounds explained that the board needed specific requests such as a site plan or square footage plan in order to give directions for an applicant. Mr. Hermann said that other Dollar General locations have a standard 4 x 4 square foot area designated for the propane tanks. Ms. Dowdy clarified that the Dollar General's Conditional Use Permit on North 12th states that they are not to exceed four rolling carts (u-boats). Ms. Dowdy asked if Dollar General displays merchandise on the side of the building. Mr. Hermann replied that they do not display merchandise anywhere that is not visible for the clerk from inside the store. Brad

Darnall asked how many u-boats would be outside on any given day. Mr. Hermann replied that the plan-a-gram never had more than three shown.

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

Josh Vernon made a motion to approve the Conditional Use Permit for the Dollar General Store located at 717 South 12th Street to allow for the outdoor storage of merchandise to include the ice machine, a Redbox, the propane storage, and up to four u-boat carts on the west side of the building. These items are not to encroach on the accessibility of the sidewalk out front, not to pass the ends of the building and are not to encroach upon the restrictions of the Fire Marshal. Mary Anne Medlock stated that the motion needed to be amended because Dollar General had a corporate change where there are no more than three u-boat carts on the plan-a-gram; thus, Josh Vernon amended his motion to the following:

Josh Vernon made a motion to approve the Conditional Use Permit for the Dollar General Store located at 717 South 12th Street to allow for the outdoor storage of merchandise to include the ice machine, a Redbox, the propane storage, and up to three u-boat carts on the west side of the building. These items are not to encroach on the accessibility of the sidewalk out front, not to pass the ends of the building and are not to encroach upon the restrictions of the Fire Marshal. Scott Seiber seconded the motion and the motion carried with a 6-0 voice vote.

Public Hearing: Dimensional Variance request for one additional wall sign – 1400 North 12th Street – David Taylor Chrysler: Candace Dowdy used a Power Point presentation to show the front of David Taylor Chrysler located at 1400 N. 12th Street. The applicant is requesting a sign variance for one additional wall sign. This business is located in the B-2 (Highway Business) zoning district and is surrounded by B-2 in all directions. David Taylor recently leased the Chrysler dealership from the Cain family. The Chrysler Corporation has changed their logos and is requiring them to replace the old logos. The Cain's sign will be replaced with David Taylor. Mr. Taylor would like to place one additional wall sign on the face of the building, for a total of five wall signs. The allowable signage for the face of the building (west side) is 85 square feet. The requested signage for all five signs equals a total of 72.58 square feet. This property has received two variances from the Board of Zoning Adjustments. The first variance was granted on March 20, 1991 allowing the current free standing sign to be 160 square feet in size and 28 feet in height. The second variance was granted on April 19, 2006 approving three additional walls signs on the front façade for a total of four walls signs with 49.6 square feet over all. The new owner is proposing to reduce the size of the free standing sign to 103.64 square feet and the height to 22 feet.

SQUARE FOOTAGE OF SIGNS:

Chrysler = 11.46
Jeep = 14.28
Dodge = 8.31 (Replacing)
Ram = 11.13 (Replacing)
David Taylor = 27.4 (Replacing)
Total Sq. Ft. = 72.58

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

David Taylor, 1303 Oak Hill Court, Murray was sworn in. Mr. Taylor explained that Chrysler has rebadged the Ram product on its own; therefore, a sign is needed to signify that. They currently have a temporary sign displayed. Mr. Taylor stated by adding this sign the signage on the front of the building will be more balanced and that they will have LED lighting. Some of the lights are currently out on the existing signs and they chose not to fix them until they found out whether or not the board would approve their request. He concluded that this would be an improvement to the building.

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

Scott Seiber made a motion to approve the dimensional variance request for one additional wall sign for a total of five wall signs not to exceed the allowable 85 square feet, to be placed on the front façade of building located at 1400 N. 12th Street, based on the findings that the changes requested are less than the overall maximum allowed square footage and that 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 nuisance to the public and will not allow unreasonable circumvention of the requirements of the zoning regulations. Mary Anne Medlock seconded the motion and the motion carried with a 6-0 voice vote.

Chairman Krieb called for a 10 minute break at 6:00 p.m. The meeting resumed at 6:10 p.m.

Public Hearing: Dimensional Variance request to operate as a bar/tavern – 1051 North 16th Street - The Keg Restaurant: Justin Crice used a Power Point presentation to show The Keg Restaurant located at 1051 North 16th Street. This property is located in a B-2 (Highway Business) zoning district and is surrounded by B-2 in all directions. The Keg has applied for a retail drink and retail beer license and is requesting a Conditional Use Permit to operate as a bar/tavern. The Keg has been in operation as a restaurant in Murray since 2002 with a 70/30 limited restaurant liquor license for its establishment. The current building in which The Keg is located was constructed in 2002 by Steve Mason and has a total of six tenant spaces. The Keg's space is a total of 5588 square feet. The building permit issued in 2002 had an occupant load of 122 for the restaurant and a total occupant load of 141 for the entire space which includes an attached pool room. The Keg does check ID's on occasion whenever they have live music to make sure that those who enter are 21 years of age. Staff spoke with Fire Marshall Dickie Walls and he indicated there are no outstanding fire code violations as long as the existing floor layout is maintained. The BZA did grant a variance on 12/18/02 which approved a 25 foot front setback variance on an accessory structure that was to enclose an open pit cooker and the wood for it. This variance for the accessory building and dumpster was approved contingent upon screening/landscaping being provided around them to hide the view from North 16th Street. The BZA also approved a 55 space parking variance on February 21, 2001. Upon review of this property Planning Staff found there to be 89 striped parking spaces. Current parking regulations would require 127 parking spaces and the board approved a 55 space variance. This variance was contingent upon no future outdoor storage and a landscaping plan being presented to the city before a building permit was issued. Current signage is in compliance with sign regulations. Scott Seiber asked how far it was to the rear property line behind The Keg. Ms. Dowdy replied that it is approximately 26 feet from the back of the building to the rear property line. There are no current designated parking spaces in the back even though the initial site plan showed some parallel parking spaces. Ms. Dowdy said that she is not sure that the Fire Marshal would approve them at this time. The property owner has changed since the initial variance was granted. Mr. Seiber said that since the variance was contingent upon the conditions for screening and landscaping and given the fact that there is not much area there to work with, he didn't know how the conditions were going to be enforced. Ms. Dowdy said that is something that the board will need to take into consideration. She added that in

one of the photos, it appears that a portion of a fence is missing that hides the dumpster area and with the newly constructed sidewalk it will be difficult to replace the fence in that area. Before Planning Staff could sign off on the Zoning Certification Form, they needed to make sure that the business was in compliance with all zoning regulations. The Building Official and the Fire Marshal also had to sign off on this request and The Keg was found to be in compliance in each of these areas.

Officer Kendra Clere came forward. When performing her bar checks over the weekend, her number one concern was the safety for the customers coming and going into the establishment. She stated that even though there is not a lot of lighting at The Keg, there is a lot of lighting coming from the nearby carwash and gas station; therefore, she found that there were no safety issues with the lighting. She added that there were a lot of parking spaces available at 10:00 p.m. and in her opinion, there was not going to be a problem with The Keg. Scott Seiber asked if anyone could enter The Keg under the age of 21. Officer Clere explained that you can enter the establishment under the age of 21 while it is operating as a restaurant; however, once that atmosphere changes to that of a bar/tavern, then no one under the age of 21 is allowed. Officer Clere assured the board that the decision to define the establishment as a bar/tavern is made by the ABC Administrator and that she would be enforcing that. Chairman Krieb said that his understanding is that the change from a restaurant status to a bar/tavern status can vary at any time or any day of the week. Officer Clere stated that was correct. She has talked to some of the owners of proposed bars and suggested they set a time on certain nights which they were open to doing. She said the operation of The Keg itself is not going to change; The Keg only wants to get out of the 70/30 requirement.

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

Darren Yates, 6639 State Route 94 West, Murray was sworn in. Mr. Yates confirmed that they are not going to change their operation. They are still going to operate as a restaurant. They only want to get out from under the accounting and the 70/30 requirement as Officer Clere stated. Mr. Yates said that they already card at the door on band nights and do not plan on changing that. Don Woods, State ABC Officer, recommended that they apply for this type of license while they are still available. Mr. Yates stated that he will definitely keep up the lighting situation. He has already spoken to Peyton Mastera about a street light that keeps going out over the sidewalk and he has spoken to Murray Electric System about putting up an additional flood light at the back of the building. Mary Anne Medlock asked about the screening issue. Mr. Yates said that was done with the previous property owner and he had nothing to do with it; however, he does plan to replace a panel on the west side of the dumpster area that recently blew away. Mr. Yates stated that Don Rogers from Murray Sanitation Department told him that garbage pickup is a lot easier without a gate in front of the dumpster. Ms. Medlock asked Mr. Yates if he had a plan to come into compliance with the previous conditions that were placed on the variance now that he is aware of them. Mr. Yates replied that since the new sidewalks were installed, there is concrete over the majority of the area and not much room left to plant anything; however, he would be willing to work with the Planning Staff for some type of solution. Mr. Yates buys wood in semi-truck loads (forty bundles) and unloads the bundles in the same place that he has for the past 10 years. Mr. Yates does not know if all of the wood is on his property or if some of it is on the neighbor's property since he does not know the exact location of the rear property line. He added that if the wood is on someone else's property and they ever want it moved, he will move the wood at that time. Mary Anne Medlock said that the initial Conditional Use Permit was to enclose the cooker into the outdoor building. She asked what is currently in the outdoor building. Mr. Yates replied that a cooker is enclosed in that building and they also have a cooker inside the restaurant, but it generates more smoke than the ventilation system can handle. The Keg cooks such a large volume of meat that an additional outdoor cooker was needed. About six or seven years ago Mr. Yates contacted the city for approval before he invested in a new cooker. They approved the additional cooker and also the location of that cooker in the back of the paved area at the rear of the

building. Ms. Dowdy stated that they did not have a problem with Mr. Yates placing the cooker at the back of the pavement as long as he was not blocking the access for emergency vehicles. She added that she is more concerned with the stacked wood being enclosed so that it is not visible from North 16th. Mr. Seiber stated that he had no objection to the pile of wood in the back of the property. Mr. Roberts asked Mr. Yates to replace the missing panel where the dumpster is and continue to work with the Planning Department to see if there is anything else they can do as far as the variance goes.

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. *Peyton Mastera left the meeting at 6:40 p.m. Jennifer Tolley left the meeting at 6:43 p.m.*

Scott Seiber made a motion to approve the Conditional Use Permit for The Keg Restaurant to operate as a bar/tavern contingent upon the conditions that screening/landscaping is provided around the building, wood and dumpster area (as required in 2002) are brought into compliance, and that the restaurant remain in compliance with all fire codes. Mr. Yates is also requested to work with the Planning Staff to the best of his ability to provide whatever landscaping is possible in order to try to bring this property into compliance. Brad Darnall seconded the motion and the motion carried with a 6-0 voice vote.

Public Hearing: Conditional Use Permit request to operate a packaged liquor store in a B-1 zone – 1407A Main Street – Tuan Dinh: Candace Dowdy used a Power Point presentation to show the property at 1407A Main Street (formerly Owen's Food Market building) which is owned by T.C. Dinh. Mr. Dinh has applied with the state and the city for a retail package liquor license to operate a packaged liquor store at his building on Main Street; thus, he is requesting a Conditional Use Permit to operate a package liquor store in a B-1 Zoning District (Neighborhood Business). B-1 zoning allows for limited retail business; therefore, any use that is not listed as permitted may be considered as a conditional use by the board if it finds that the use falls within the intent of this zone that will not be more obnoxious or materially detrimental to the public welfare or to other property in the vicinity. This property was previously granted parking variances with its mixed use of restaurant, residential, and retail space. Currently the property has 60 parking spaces that are occupied by the residents of the ten apartments, the restaurant and the current beauty shop. Ms. Dowdy stated that there are no parking issues. The tenant space is approximately 2141 square feet since Mr. Dinh altered his restaurant in 2011. Approval of the Conditional Use Permit would be contingent upon the Kentucky Department of Alcohol Beverage Control issuing Mr. Dinh a license for the retail package liquor store. Current signage for this property is in compliance with zoning regulations.

Chairman Krieb asked Officer Clere to come forward to explain differences in package liquor stores and bar/taverns.

Officer Clere clarified that wine, liquor and beer can be sold in a package liquor store as well as other retail items. The establishment is strictly carry-out and nothing can be drunk on site. At this point, there have not been any licenses for package liquor stores issued. There are a few issues with lighting on the east side of the building where Mr. Dinh is proposing to put the liquor store. Officer Clere said an illuminated sign might resolve this issue; however, the lighting is a little questionable as it currently is. Parking is a little tight, but overall she thinks that will be alright. She noted that two doors down to the west there is a convenience store that is selling beer and that it could be that three doors up across the street they could be selling beer very soon. She stated that she is neither for nor against this. The state has not issued a license for the convenience store location across the street from the Dairy Queen and they may not, but Officer Clere felt it necessary to make the board aware of the alcohol that was being sold in the surrounding area.

Ms. Dowdy stated that Planning Staff had received one letter and one e-mail in opposition to this request. The e-mail was from Sara Fineman and it basically stated that she is concerned with a liquor store being allowed in a residential neighborhood as it is not compatible with the surrounding area. Ms. Fineman commented on the deterioration of Mr. Dinh's building, trash outside the building and the poorly maintained landscape. She added that neighbors are reluctant to walk by the establishment because of the high volume of traffic that enters and exits the property. The letter that was received was from Reginald (Reggie) McNutt who is an adjoining property owner and he is also in opposition.

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

Tung (T.C.) Dinh, 1007 Walnut Street, Murray was sworn in. Mr. Dinh stated that his family moved to Murray from Saigon 37 years ago when he was 13 years old. Mr. Dinh attended college here, became a United States citizen and volunteered for active duty in the military. Mr. Dinh said that he loves Murray and considers Murray his home. His family has contributed a lot to Murray and they try to be good citizens. Mr. Dinh stated that he rented the space where he is proposing to put the package store to a beauty shop on a month-by-month basis with the understanding that if the state approved his liquor license request, they would have to move. Mr. Dinh feels that that since he also owns the restaurant next door to the proposed liquor store, he will be able to manage both businesses at the same time.

Jeff Grunst, 605 Pine Street, Murray was sworn in. Mr. Grunst is Mr. Dinh's contractor. He stated that there is a light on each side of the door at 1407A Main that the tenant is supposed to leave on at night and they don't. There is a flood light at the top of the building that apparently is not working so he will also be checking on that. Mr. Grunst said that because of the economy Mr. Dinh has had to rent the space out so cheap that he is losing money. Mr. Grunst stated that Mr. Dinh had indicated to him that if he could manage both the liquor store and restaurant then he could use the space himself.

Chairman Krieb asked if there was anyone that wished to speak in opposition to the application.

Sarah Fineman, 202 North 13th Street, Murray was sworn in. Ms. Fineman said that as decisions are made about package liquor stores, she would like for the board to think very strongly about allowing liquor stores to locate in residential areas. She said there is always a potential (no matter how well they are managed) for people to hang out and congregate. She feels that more and more people that live in residential areas that adjoin commercial areas are being pushed and strained. She said that she is not against businesses and she thinks that the City boards do a good job of combining the balance of old zoning with new developments. She asked again that the board think very strongly about proposals such as this that continue to move in on the people that live in these areas.

Chairman Krieb closed the public hearing and turned it over to the board for discussion.

Brad Darnall asked if a grocery store went into this location if it would be permitted to sell beer. Officer Clere said that they could sell beer as it is now. Officer Clere also clarified that no congregation on the premises is allowed per the ABC Ordinance and that the owner of the establishment could be fined for that.

Justin Pounds made a motion to approve the Conditional Use Permit for TC Dinh to operate a packaged liquor store at 1407A Main Street. This is contingent upon the State ABC office issuing a retail package liquor license for Mr. Dinh at this location. Mr. Dinh is required to meet all

requirements of the State ABC license and the City of Murray. Scott Seiber seconded the motion. The motion carried with a 4-2 voice vote. *Mary Ann Medlock and Josh Vernon voted no.*

Public Hearing: Conditional Use Permit request to operate as a bar/tavern – 1005 Arcadia Circle – Big Apple Café: Candace Dowdy used a Power Point presentation to show the Big Apple Café located at 1005 Arcadia Circle. Owner Boone Chambers is requesting a Conditional Use Permit to operate his business as a bar/tavern in a B-2 Highway Business zone. The Big Apple has been in operation as a restaurant in Murray since 2001 and currently has a 70/30 limited restaurant liquor license. The Big Apple Café has applied for a retail drink and retail beer license at this establishment. The building is 8,800 square feet and has an occupant load of 290 according to the Building Permit issued in 2001. Planning Staff contacted Fire Marshall Dickie Walls and he stated there were no outstanding fire code violations for the Big Apple as long as the existing floor layout is maintained. All current signage is in compliance with zoning regulations. Ms. Dowdy said that the outdoor patio area was built and enclosed a few years ago and it meets the requirements of the City Ordinance for serving alcoholic beverages. Ms. Dowdy stated that there is an issue concerning the paving of the parking lot. When the Big Apple came to Murray in 2001, there was a large part of the parking area that had not been put into a hard surface where spaces could be striped. Mr. Skip Chambers (previous owner and father of Boone Chambers) had agreed to turn the over-flow parking area into a hard surface if and when their business should become profitable; thus, they were granted a variance. In 2006 Ms. Dowdy sent a letter to the owners reminding them of the 2001 variance that they had been granted, consequently she informed them that they were not in compliance. Planning Staff looked at the amount of spaces that were paved and striped. At that time, the Big Apple decided to pave another row and drive aisle. Ms. Dowdy said that Mr. Boone Chambers had indicated recently that there is still approximately a third of the parking lot that had not been paved. The graveled area is used frequently on weekends for overflow parking.

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

Boone Chambers, 1005 Arcadia Circle, Murray was sworn in. Mr. Chambers stated that he was asking for a Conditional Use Permit to run the Big Apple as a tavern/bar. Mr. Seiber asked Mr. Chambers if he was currently in a good position to pave the rest of the parking lot. Mr. Chambers replied that he has looked into it and it is a lot of money, but if the board required him to pave the balance, he would. Mr. Chambers stated that there are a few reasons that they haven't paved the east side. There are a lot of delivery trucks that frequently come and go through that area that could damage the pavement; several customers with heavy trucks, trailers and backhoes use that area for parking; but the main reason is the amount of money that it would cost. Mr. Chambers said that when they were asked to add to their green space, they gave up some of their parking. He currently shares his parking lot with the City Park when baseball season is active and also with the movie theater. He agreed that he does need the parking and on a good weekend, his parking overflows to the theater parking lot. Mr. Seiber said that he thought it would be a good idea for Mr. Chambers to complete the parking lot.

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.

Scott Seiber made a motion to approve the Conditional Use Permit for The Big Apple Café Inc. to operate a bar/tavern at 1005 Arcadia Circle contingent upon the restaurant maintaining compliance with current fire codes and paving the balance of the parking lot. Mr. Chambers will be allowed nine months to complete this requirement. Brad Darnall seconded the motion and the motion carried with a 6-0 voice vote.

Questions and Comments: None.

Adjournment: Scott Seiber made a motion to adjourn. Justin Pounds seconded the motion and the motion carried unanimously. *The meeting adjourned at 7:20 p.m.*

Chairman, John Krieb

Recording Secretary, Reta Gray