

**MURRAY BOARD OF ZONING ADJUSTMENTS  
REGULAR MEETING  
WEDNESDAY, FEBRUARY 20, 2013  
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, February 20, 2013 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5<sup>th</sup> Street.

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

**Board Members Absent:** Brad Darnall

**Also Present:** Candace Dowdy, Justin Crice, Reta Gray, David Roberts, Jennifer Tolley, Mike Pitman, Officer Kendra Clere, Officer Todd Clere, Butch Sergeant, Steven Corderre, Benny Jackson, Gary Murdock, Sarah Fineman, Shirley Hart, Lisa Hall, Patrick McManus, Megan Seal, Troy Stovall, Attorney Gerald Bell, Glen Peters, Yancey Watkins, Rick Johnston, Mike Noonan, Lynda Grey Houck, Jay Page, Angel Gurley, Phillip Moore, Judy Ratliff, Terry Strieter, Linda Scott 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 January 16, 2013 regular meeting. Changes were noted.

**Scott Seiber made a motion to approve the amended BZA minutes from January 16, 2013 regular meeting. Josh Vernon seconded the motion and the motion carried unanimously.**

Chairman Krieb noted that the Murray Banquet Center had withdrawn their application at this time and that it would not be discussed at the meeting.

**Public Hearing: Conditional Use Permit request to operate a bar/tavern located at 715C South 12<sup>th</sup> Street– TC’s Club - TC Dinh, Owner:** Candace Dowdy noted some changes to the BZA Staff Report on this item. Ms. Dowdy used a PowerPoint presentation to show the zoning of the property as B-2 Highway Commercial and adjacent R-2 Single Family Residential. Ms. Dowdy indicated the property at 715 South 12<sup>th</sup> St. also has Vernon’s Pawn Shop and Debbie & Co. hair salon as tenants. Ms. Dowdy showed photos of the property explaining that Mr. Dinh previously had a restaurant at 715C and a construction service at 715B. This space would be combined for the proposed bar. Ms. Dowdy clarified that Mr. Dinh previously had a drive up window at 715C with his restaurant but that it would not be allowed with a bar. There is approximately 143 feet from the back edge of the parking lot to the edge of the adjoining residential zone and also a green space area on the east side of the property. The owners will need a parking variance or need to provide additional parking. Ms. Dowdy said that a bar/tavern has to be reviewed as a conditional use in a B-2 Zone as adopted in December 2012. A state license has been issued for this location. The building has an occupant load of 66 persons, and parking requirements would be based on that. She stated the building was inspected as 1200 sq. ft. by the Fire Marshall and the total number of parking spaces required would be 62 for the whole building with 715C South 12<sup>th</sup> Street needing 26 spaces. The total number of spaces striped at this property is 35 spaces based on retail sales and service.

Scott Seiber asked if there was a provision for relaxing parking requirements with business with different timeframes on the same lot. Ms. Dowdy replied the Board has considered that before as to the nature of multiple businesses in the same location having opposite hours and that would be something the Board could consider because the hair salon would be closed probably by 6 p.m. Shawn and Huong Kelly own the property and also the property to the north. Josh Vernon asked if there was a barrier between the two

lots. Ms. Dowdy stated the drive is open between the two. Ms. Dowdy added that she did not notice any exterior lighting and that would be addressed by Officer Kendra Clere. Ms. Dowdy also suggested the parking lot needed to be re-stripped because the stripes are very faded. Chairman Krieb read the letter from adjoining property owners and passed it around for the Board to view. (*The letter was entered as Exhibit A.*)

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

Steven Corderre, 513 Broad Street was sworn in. Mr. Corderre stated he was there to speak for Mr. Dinh. Mr. Corderre stated the hours of operation of the business would be from 3 p.m. until midnight. He continued that he would have no problem utilizing parking to the east or the property to the north. He said the owners would do everything in their power to make sure the neighbors were not disturbed. He added that the music would be kept audible to only those inside the business and that the business would not be loud or unruly. He said it was an establishment for grownups trying to get away and play pool. Mr. Corderre said that was the way that T.C.'s restaurant (Vietnamese Cuisine) on Main had been managed for almost two years and they haven't had any complaints there. He stated he would like to make an extension of that restaurant and get away from having teenagers in the establishment. Ms. Dowdy clarified that Vietnamese Cuisine was a restaurant that has a 70/30 limited drink restaurant alcohol license. Mr. Corderre indicated they might add finger foods to the menu but it was basically going to be a place to hang out. Josh Vernon asked if there were any plans to alter the existing building. Mr. Corderre answered yes. The plan is to open it up to create a better dining area and a place to put the pool tables. Scott Seiber asked if they had plans to serve food and or alcohol outdoors. Mr. Corderre answered not currently. Scott Seiber went on to ask what they would be willing to do as far as sound barriers or landscaping. Mr. Corderre said he would have some sort of sound barriers but he was not sure where Mr. Dinh would like to put them. Mr. Seiber said he was more concerned about a putting up a fence that would deflect sound and have landscaping as a buffer. Mr. Corderre said he would look into that and he didn't see why Mr. Dinh would be opposed to it. Mary Anne Medlock stated the Board has previously worked on other projects that adjoin R-2 neighborhoods where a fence and plantings have been required to serve as a barrier. Mr. Corderre said he didn't see that being an issue. Scott Seiber asked what his relationship was with Mr. Dinh. Mr. Corderre said he will be running and managing this establishment. Scott Seiber asked if Mr. Corderre had operated a bar before. He responded he had not but he had operated his own business for ten years. He added that he was aware that a bar was different. Mr. Corderre concluded that Mr. Dinh will be around at this location but Mr. Corderre will be in charge when Mr. Dinh is not there.

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

Benny Jackson, 1110 Fairlane was sworn in. He stated he lived opposite of the fence row on Fairlane. Mr. Jackson said that his neighbors seem to agree that a bar/tavern was noisy and unattractive to the neighborhood. They take pride in their neighborhood and keep it well maintained. The properties in Circarama Subdivision are privately owned and occupied and there is a church at the end of the street. He said all of their backyards back up to this property in question on South 12<sup>th</sup> Street. Mr. Jackson added that the neighbors are in favor of keeping the neighborhood as quiet as possible and as clean as possible. Mr. Jackson does not know Mr. Dinh personally nor does he have objections to him running a bar, but he would prefer it not to be in his backdoor; therefore, he is against this application. Josh Vernon asked if he had contacted anyone concerning decreasing the property value. Mr. Jackson said he had spoken to his bank and was told that this establishment would most likely lower his property value. Scott Seiber asked if he had any suggestions that he would offer Mr. Dinh or his manager in order to help alleviate the noise or aggravation of the bar being in the area. Mr. Jackson replied that a big wall that would eliminate

people from crossing over into the neighboring yards. Mr. Jackson said if there was a barrier between him and the establishment, he had no objection to the Mr. Dinh selling beer or liquor there, he just didn't want the establishment being pushed onto his property.

Gary Murdock, 1397 Johnson Blvd was sworn in. Mr. Murdock said he was a resident from across the street and he also owned a business across the street. He stated when you leave 12<sup>th</sup> Street you are in residential area where there are children and people who walk, run and ride their bicycles. Mr. Murdock believes that people who leave this establishment are going to use the cut-through streets like Meadow Lane, Story, and Whitnell. He said he had more of a problem with people leaving the establishment after drinking than going and drinking. Mr. Murdock asked if the owners had a floor plan for their building. Ms. Dowdy said they had not submitted a site plan and she gave an explanation on determining maximum occupancy. Mr. Murdock asked if Mr. Dinh would be required to get another conditional use permit if he expanded the development. Ms. Dowdy replied if the business was expanded or altered that it would have to come back before the Board. Mr. Murdock asked if the residents would receive a letter if there was another BZA meeting. Ms. Dowdy explained that all adjacent and adjoining property owners would be notified. Mr. Murdock asked if the other tenants of this building knew about this proposal. Ms. Dowdy could not answer for sure, but she clarified that Planning Staff notifies the adjacent and adjoining property owners, not their tenants. Mr. Murdock revealed that he had spoken to Calloway County PVA Administrator Ronnie Jackson, and he had indicated that the property values for adjoining properties would probably go down. Mr. Murdock concluded that he opposed this application.

Sarah Fineman, Murray KY was sworn in. She stated she is opposed to conditional use permits. Ms. Fineman said that she has yet to find someone who can enforce these conditions placed on certain establishments. Ms. Fineman lives behind Kentucky Fried Chicken where there was supposed to have been a barrier with trees between the two properties. She was disappointed that the barrier was never installed and that there had been no enforcement for that. She said she thinks there has to be a better way than the conditional use permits. Mary Anne Medlock stated she didn't disagree with Ms. Fineman's assessment; however when the State issues a license before the City can issue a license; this is the procedure that the board has to go through. Ms. Medlock went on to say that hopefully they can listen to the neighbors and the applicants to put a process in place in the beginning, rather than trying to go back to enforce it later. Adding the proper language in the permit that is best for the neighborhood and city will make these permits stronger. Ms. Fineman said from her experience the conditional use permits were not monitored or reinforced; therefore, she opposes them. Ms. Medlock said she agreed with Ms. Fineman with having enforcement, but Staff was limited on enforcement and that was a City issue. *Justin Pounds entered the meeting at 5:16 p.m.*

Shirley Hart, 1104 Fairlane Drive was sworn in. Ms. Hart said she can look out her kitchen window and see people walking in the neighborhood where she also walks her dog. She had lived there for twenty years and doesn't have to worry about taking her dog for a walk at night. She urged the Board to listen to the neighbors and vote no.

ABC Officer Kendra Clere came forward. She stated the lighting was addressed in the ABC Ordinance; therefore, she would be handling the lighting situation. The City has a noise ordinance which can be enforced by the Police Department. Ms. Dowdy asked if there were regulations regarding a bar/tavern being near a church or school. Officer Clere replied that an establishment with a malt beverage license cannot advertise outside the establishment if they are within 100 feet of a church, school, or daycare and that a bar/tavern cannot be located on the same street facing a church, school, or daycare. Officer Clere added that if the State issued a license, then the establishment had met all the State requirements.

Chairman Krieb asked if there was any rebuttal.

Steven Corderre addressed some of the issues. Mr. Corderre wanted to express he does not want to disturb the neighbors. He agreed to put in a fence since he does have money in the budget for exterior upgrades. He is also willing to comply with what the Board requests as far as a green barrier. Chairman Krieb suggested a minimum of an 8 foot tall fence along the east side and possibly enclosing the green space for the Board to consider. Josh Vernon asked about the measures to ensure safety for patrons after closing. Mr. Corderre said he will be glad to call taxis for them or he would personally drive them home. Chairman Krieb asked what days of the week they would be opened. Mr. Corderre replied Monday through Saturday with no Sunday operation. Mr. Corderre identified the Murray Banquet Center in Bel-Air Shopping Center as having served alcohol before. He said that if they have not had a problem before now, he could not see this establishment being across the street as a problem.

Chairman Krieb closed the public hearing and opened the floor for Board discussion. Ms. Dowdy clarified the Board's rights under KRS to review these conditional use permits. Scott Seiber stated that if this application is approved, the Board should review this conditional use permit no later than one year. Mary Anne Medlock said the Board should take advantage of the ABC for enforcement and not wait for the review if the land owner is not in compliance. Chairman Krieb said he thought a timeframe would be worth considering when stating the motion or conditions. There was some additional Board discussion on sound barriers, screening for the area, and parking for the area.

**Josh Vernon made a motion to deny the Conditional Use Permit for TC Dinh to operate a bar/tavern at 715C South 12<sup>th</sup> Street on the findings that a tavern at the adjacency of the residential neighbors would be inappropriate. *No second was given and the motion was removed from the floor.***

**Scott Seiber made a motion to approve the Conditional Use Permit for TC Dinh to operate a bar/tavern at 715C South Street with the following conditions:**

- **Construction of an 8 foot tall privacy fence.**
- **A landscape plan with evergreens to be located in the green space on east side of property is required.**
- **There shall be no expansion of the parking lot in the rear and the applicant should contact the property owners to the north for the use of their parking lot.**
- **The current parking lot should be re-stripped with a 27 parking space variance.**
- **Additional concrete parking stop blocks or barriers to keep vehicles from parking in green space to the east are required.**
- **Establishment must meet all fire codes.**

**This permit would be reviewed in one year for the existing 1200 square foot facility only and the owner should work with Planning Staff on screening/sound barriers to the adjoining property owners. Mary Anne Medlock seconded the motion and the motion carried with a 3-1 voice vote. *Josh Vernon voted no and Justin Pounds abstained.***

**Public Hearing: Conditional Use Permit request to operate a bar/tavern located at 1300 North 16<sup>th</sup> – The Bootleg Lounge – LP Enterprises – Ben & Lisa Hall, Patrick McManus:** Candace Dowdy used a Power Point presentation to show the property at 1300 North 16<sup>th</sup> Street (formerly the Murray Moose Lodge). The property is located in a B-2 (Highway Business) zone and is surrounded by B-2 to the East and South and by R-4 (Multi-Family Residential) zoning to the north and west. LP Enterprises has received State of Kentucky ABC approval for a bar license and is requesting a conditional use permit to open a bar/tavern at this location. Currently the property is owned by Dale Campbell and being leased by Ben & Lisa Hall, and Patrick McManus. Ms. Dowdy explained that the Planning Commission

approved a minor subdivision plat the previous night with a 40 foot access easement across this property (tract 2-A) to access tract 2-B (adjoining property to the east) that does not have any road frontage. The proposed access easement is 75 feet at the street and then narrows to 40 feet back to tract 2-B and is approximately 10 feet from the south side of the building. Ms. Dowdy stated that the applicants plan to purchase the property if their request for a conditional use permit is approved. They plan to renovate the building on the interior but do not plan any major exterior alterations. The exterior dimensions of the building are approximately 67 feet in width x 110 feet in length. The new owners are planning on dividing the building into two spaces. The north side of the building will be the location of The Bootleg Lounge (proposed bar/tavern) and it will be 67 feet x 61 feet for a total of 4,087 square feet. The south side of the building will not be occupied at this time. There are currently no definite plans for it; however, the possibility of a retail business going in that space has been indicated by Ms. Hall. Ms. Dowdy stated that since one side of the building will be vacant, parking requirements will only be reviewed for the north side where the bar will be located. Parking requirements for the bar will be a minimum of 45 spaces and will have to be configured once the occupancy load is determined. The lot will also have to be striped and have the proper width for drive aisles designated. Additional parking spaces will be required for the remaining portion of the building depending on the future use. The parking lot will need to be restriped. Ms. Dowdy said that the back side of the building will at some point be put into a hard surface. It is the Planning Staff's desire for sidewalks to be installed across the front of their property. Currently there is not any exterior lighting at the location and when Ms. Dowdy spoke to Ms. Hall about that, she indicated that the safety of their customers was important to them and that proper lighting would be installed. Planning Staff has also discussed the possible location of an enclosed dumpster area around back. Ms. Dowdy stated that currently there is no landscaping around the building and that Ms. Hall had indicated that she would be submitting a landscape plan for approval. All signage will need to be reviewed and approved prior to installation. Adams Construction is the contractor for this renovation and will be required to submit a building permit application along with a site plan for review to ensure that all city regulations including building and fire codes are being met. The new owners are planning on serving food and are in the process of getting the appropriate permits through the Health Department. Adjoining property owners were notified of this request.

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

Lisa Hall, 302 Marywood Drive, Benton, Kentucky was sworn in. Patrick McManus, 3411 Sierra Drive, West Paducah, Kentucky was sworn in. Ms. Hall stated that since the first week of January they have owned the property. Ms. Hall presented a landscape plan. (Justin Crice passed a copy of the plan around to the board members.) Ms. Hall explained that the drawing has a sign shown, but they are not ready to address the signage at this time. She said that they have addressed the sound and visual barriers by choosing (per advice of their landscape designer) an evergreen that is bushy and grows 35-40 feet tall. These plants will be set along the rear of the establishment. Ms. Hall stated that the Murray Moose Lodge building had been vacant for quite some time and was in need of repair. They have hired John Gust from Mayfield as their interior decorator and landscape designer. They have a plan to paint the outside of the building a subdued color that is inviting and warm. The shingles will be replaced. Concerning the outdoor lighting, Ms. Hall said they had spoken to Murray Electric about the four utility poles that are on the property. They would like to put lights on three of the four. There will also be lights on the front of the building that will illuminate both up and down so the facility will be very well lit. There are already a couple of lights on the back of the building and they plan to additional lights to the back. She has talked with Southfork Electric concerning the lighting but hasn't heard back from them yet. Ms. Hall stated that Mitchell Bros. Paving has given them a quote for striping and making updates to the parking lot. The way that the parking is drawn, sixty parking spaces are shown but she thinks there are probably ways to get more. (Justin Crice used the overhead to show the proposed drawing for the parking lot.) Ms. Hall

said that they had spoken to Don Rogers of the Sanitation Dept. and he has indicated that they need a concrete pad both to the entrance of the dumpster and under the dumpster. He also suggested that the dumpster be located on the northeast corner of the property. Ms. Hall added that they plan to have eight foot panels around the dumpster area. They have talked with the Health Department concerning the requirements they will have to meet in order to serve food. They do not have their menu at this point, but they plan to serve hamburgers, hotdogs and similar items. The facility has a kitchen and the equipment is in pretty bad shape. They plan to renovate the kitchen area. Mr. McManus said that the building is 6500 square feet. Mr. McManus stated that the 2 hour fire wall is in motion at this time that divides the two sides. Adams Construction is in charge of that and it will be up to code. The physical space that the bar will occupy will be approximately 3,000 square feet and at this time they are not exactly sure what the seating capacity will be for that side. The public area for the bar will be around 1800 square feet and the kitchen, storage and restrooms will occupy the rest of the space. Justin Pounds asked if there were plans for an entrance on the opposite side of the building. One of the arches on the front of the building will be used for the additional entrance. Chairman Krieb asked what kind of operation they would have and what the hours of operation would be. Ms. Hall replied there would be a pool table and darts and maybe an occasional band. The hours will be 3 p.m. through midnight Monday through Saturday. She said that they have a bar manager that has done this type work for 20 years in Paducah and Indianapolis. Scott Seiber asked if they were in agreement to put sidewalks possibly on two sides of the building. Mr. McManus replied that he would like to have an agreement with Mr. Campbell to address that since Mr. Campbell owns the adjoining property. Ms. Dowdy agreed that that would be good for Mr. Campbell to be contacted since he is the adjoining property owner. Mr. Pounds said that he would be less inclined to add the sidewalks (going to the east along the easement) as a condition for this CUP because he thinks it is more of a luxury for the development of Mr. Campbell's property. He is in agreement that the sidewalk across the front of this property be installed as other developments in the surrounding area have complied with this request. Mr. McManus said that he is sure at some point in time they will be willing to work on the sidewalk. Ms. Dowdy noted that the access easement would be 10 feet from the corner of the building and she thought consideration of a curbed area might be a good idea in defining the entrance to the other side of the building. Mr. McManus replied that most likely the end doors will be used for their personal access and would not be used for the front entrance to another business since they have already allocated an area along the front of the building for that additional entrance. Mr. Pounds ask who would be responsible for the upkeep of the access easement when it is used in the future development of the property. Ms. Dowdy said that she does not think that the easement will ever be turned over to the City for maintenance since the intention is not to be a thru-street.

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

Megan Seal, 459 Shoreline Drive, New Concord, Kentucky was sworn in. Ms. Seal stated that she was representing the owner of 1301 N. 16<sup>th</sup> located directly across the street. She stated that the property owner lives out of state and she has concerns about foot traffic across her property. The owner also wanted to know if there was asbestos or mold in the building and if so, if proper means to dispose of them would be followed. The owner is concerned about the value of her property decreasing with a bar/tavern across the street and about people driving through her property when leaving the establishment. Scott Seiber replied that all the vehicular incidents would be related to law enforcement. Ms. Dowdy stated that the applicants would have to get a building permit before any work could be done on the facility and if there is asbestos in the building, Adams Construction would be aware of it and they would know the proper procedure in handling this situation and the people to contact to have it removed. Ms. Seal asked if this information could be accessed through a website. Ms. Dowdy replied that if the owner is interested in retrieving any of this information she can contact Planning Staff and they could e-mail this information to her.

Chairman Krieb asked if there was any rebuttal.

Ms. Hall and Mr. McManus came forward. Mr. McManus said that neither the previous owner nor Adams Construction have given them any indication that asbestos was located in the building. The building is basically cinder block walls and to their knowledge there is no mold there either. He added that they will have security at their facility; therefore, he does not think that the neighbors will have to worry about people leaving their establishment and being bothered with their patrons anymore than they would the foot traffic from The Keg which is to the south on North 16<sup>th</sup> Street. Ms. Hall said as far as the nearby property values decreasing, she could not imagine a bar/tavern lowering the value any more than the previous abandoned building would.

Chairman Krieb asked if there were any questions for ABC Administrator Sergeant Kendra Clere. There were none. He closed the public hearing and turned it over to the board for discussion and a motion.

**Josh Vernon made a motion to approve the Conditional Use Permit for The Bootleg Lounge located at 1300 North 16<sup>th</sup> Street. This approval is contingent upon the parking lot being striped before the establishment opens and the facility meeting all other city regulations including the provision to extend the sidewalk in line with the existing sidewalk to the south with the findings that it is appropriate in the given situation and B-2 Zoning District. Whenever the property to the south is developed, the installation of sidewalks will be required across the front of this property. This is in accordance with the proposed 3,000 square feet establishment- and the applicants are required to work with Planning Staff concerning the screening on the north side. Scott Seiber seconded the motion and the motion carried with a 5-0 voice vote.**

**Public Hearing: Conditional Use Permit request for a proposed residential PDP on south side of Lowes Drive – Troy Stovall:** Justin Crice used a Power Point presentation to show the property that Troy Stovall recently purchased on the south side of Lowes Drive. This property consists of a 4.435 acre tract of land south of The Chase (Murray Place) Apartments. It was rezoned in February 2008 from R-4 to B-2 which allows residential planned development projects as a conditional use. Mr. Crice stated that the preliminary plat was reviewed and approved by the Planning Commission the previous night. Mr. Stovall plans to develop this property in three phases. The order in which the phases will be developed depends on the sewer connections. The property has been used as a rock quarry with a portion of it used as stormwater detention for The Chase. The preliminary plat shows 60 one bedroom units on the lot. The units are 16.7 feet wide x 36 feet in depth. The property has one 30 foot entrance off Lowes Drive with a minimum 24 foot drive aisle around the development. Parking requirements for a development of this size would be 180 parking spaces. The site plan shows a total of 124 parking spaces. This would be two parking spaces per dwelling unit with four (4) visitor spaces. A 56 parking space variance will be required which eliminates the one extra visitor space required for a development over four units. Planning Staff thinks that this number of parking spaces is satisfactory based on previous experience with developments of this nature. Building setback requirements are being met. A landscape plan will be required for this project. Mr. Stovall indicated that he would like to put a retaining wall along the south side of the property. Enclosed dumpster areas are shown in three locations on the property and the proposed locations were approved by the Sanitation Department. Fire Marshall Dickie Walls reviewed the site plan for fire access compliance and stated that a fire hydrant would need to be located somewhere on the property. If this project receives preliminary approval the city will be working with Mr. Stovall on the engineering of the stormwater detention for this project that will also be designed to accommodate needed improvements to the overall drainage for the North 16<sup>th</sup> Street area. Adjoining property owners were notified of the public hearing.

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

the application.

Troy Stovall, 151 Lake Song Lane, Murray was sworn in. Mr. Stovall said that the property was a rough piece of property when he purchased it and he has worked hard to come up with a plan for development. He added that the main reason for the retaining wall on the south side next to the church was because of the amount of water that drains there and that a fence would probably be impossible to maintain. The roads will be constructed when the dirt work is started. The concrete pads will be poured for all three phases at the same time; however, the construction of the phases will come at different times. Mr. Stovall pointed out all the green space that would be in the development and stated that there would be landscaping across the entire front of the project.

Gerald Bell, 211 S.12<sup>th</sup> Street (business address), Murray was sworn in. Mr. Bell stated that he and Joe Cohoon own property to the south of this proposed site. He has been paying attention to that piece of property for a long time. It has been overgrown and he personally thinks that Mr. Stovall has a good plan for developing the property.

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

**Justin Pounds made a motion to approve the Conditional Use Permit for the Residential Planned Development Project on the south side of Lowes Drive for Troy Stovall. In addition, he moved to approve a 56 parking space variance at this location. This is contingent upon Final Plat approval by the Planning Commission, stormwater detention plans being submitted and approved, and the project meeting all other city regulations. Scott Seiber seconded the motion and the motion carried with a 5-0 voice vote.**

Chairman Krieb declared a 10 minute recess at 7:18 p.m. *Officer Todd Clere and ABC Officer Kendra Clere left the meeting at 7:18 p.m.* The meeting reconvened at 7:28 p.m.

**Public Hearing: Conditional Use Permit request for a proposed residential PDP on north side of College Farm Road – Brad Wedel & Glen Peters:** Justin Crice used a Power Point presentation to show the property that Glen Peters and Brad Wedel have purchased on the north side of College Farm Road. The property consists of two tracts of land that total 2.648 acres. The property is also in the process of being annexed into the city limits and is proposed as R-4 zoning. A minor subdivision plat was recently approved by the Planning Department consolidating this property and has been recorded. Mr. Peters and Mr. Wedel would like to develop this property as a multi-family residential planned development project. This project was reviewed for advisory and compatibility in September 2012 and is now moving forward with preliminary plat review. The preliminary plat shows developing this property as 36 one bedroom units. The size of each unit is 18 feet x 32 feet. The site plan layout has changed since the September 2012 review due to additional property that was purchased. The development has one twenty-four foot entrance off College Farm Road. Based on the number of units 108 parking spaces would be required for this development with 75 parking spaces being shown on the site plan. This provides two parking spaces per unit with three visitor parking spaces. A variance of 33 parking spaces will be required for this project to move forward. Ms. Dowdy added that if the board felt it feasible, they could require 1.5 spaces per unit since these were one bedroom units. All building setbacks are being met. Five foot concrete walkways are shown in front of the units with each unit having a concrete patio in the rear. It has been suggested to the developer that they construct a sidewalk along one side of the entrance to the development that connects up to the sidewalk along College Farm Road. The enclosed dumpster area will be located to the rear of the property along the west side. A landscape plan will be required. Planning Staff has discussed with the developers the placement of an eight foot privacy fence



around the perimeter of the property in order to provide screening to the adjacent properties. The utilities are not finalized yet; however, they are shown on the preliminary plat. The Fire Marshall has reviewed the plat and indicated that a fire hydrant will need to be located somewhere on the front of the property for proper fire protection. Stormwater detention plans have not been submitted at this time; however, they will be required for this project prior to any final approval. The property is very flat and there are some drainage concerns from adjoining property owners. Mr. Crice showed pictures that Yancey Watkins submitted of the property after a rainfall in January 2013. Scott Seiber addressed the Yancey Watkins comments that had been submitted and he stated that he agreed with Mr. Watkins and shared his concerns. Mr. Seiber stated that he is familiar with the property and added that he had previously tried to purchase it. The property is a wet piece of property. He is concerned that a detention area might not be able to take care of all the water. Josh Vernon said that if this project moves forward, he thinks it is important that the water run-off to adjacent properties is not increased and that the current conditions will not deteriorate. Chairman Krieb stated that the aerial view shows a ditch across the back of the property and it has been determined that the flow goes to the northwest. Part of the goal is to see that the flow continues in that direction. If the engineers succeed in their design to contain what is now standing on the property and divert it north, that would decrease some of what is currently flowing to east. All adjoining property owners were notified of the public hearing.

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

Glen Peters, 4730 High Road, Sedalia, Kentucky was sworn in. Mr. Peters said that the main issue that has been addressed is the drainage problem. They are working with an engineer to develop a plan for this. The goal is to try to improve the water flow for the neighborhood as well as for their property. He has not contacted the land owners to the north, but that is something that he intends to do to see if they would be willing to work with them on a solution to this situation. Some of the drainage goes to the northwest and some goes to the east; however, they both drain into the creek. There is also some of the water that flows to the south towards College Farm Road. Mr. Peters said that they were planning on fencing and screening the property especially on the east and west. Mr. Vernon asked if they were not able to do anything with the drainage on the north side of the property, what would be proposed. Mr. Peters replied that they would just have to work with what they have and it would be up to their engineers to figure something out. Ms. Dowdy explained that upon final plat approval, if the final detention proposal is not ready, approval of the final plat will be contingent upon those storm water detention plans being presented to their office and approved.

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

Yancey Watkins, 803 North 20<sup>th</sup> Street, Murray was sworn in. He commended the staff for the presentation saying that it was both comprehensive and adequate. Mr. Watkins said that he is not against the proposed development, although he does think that 36 units are entirely too many units for the property. He is concerned with the possible diversion of water to his property. Mr. Watkins has owned the two lots east of the proposed development for 46 years and for that entire time water has drained slowly from the northwest corner of his property across the "original portion" of the Parker-Bell property and the Cavitt woods. Mr. Watkins stated that the "newly purchased portion" of the Parker-Bell property has been wet as long as he has lived there even though it has never officially been declared "wet land". All of the property is relatively flat without much if any significant elevation. Mr. Watkins said it is more appropriate to talk about oozing, seeping and trickling than to talk about run-off when referring to this property. Using the overhead, Mr. Watkins showed pictures that he had taken on January 11, 2013 at 3:00 p.m. after a typical overnight winter rain from the previous night. Each of the pictures showed an abundance of water standing on the property. (*Pictures were submitted as Exhibit A.*) Mr. Watkins

commented that since the year of the ice storm in Murray, the water has actually drained more poorly than it had in earlier years. He attributed that to some downed limbs and trash that others had put there. Mr. Watkins said that approximately 10% of the new proposal would remain in landscape and 90% would become hardscape and he is concerned that rainwater and run-off will continue to flow across his property at an even greater rate. According to Mr. Watkins calculations there would have to be a substantial basin to hold the amount of water that is generated on these properties. Mr. Watkins had the following two requests that he wished for the board members to consider:

- 1) A detention pond be constructed that would be sufficient to handle the anticipated amount of run-off along with the existing surface water from the Parker-Bell property and his property.
- 2) Installation of a fence to screen his property from the development.

Chairman Krieb said that according to his calculations, he thought the green space and landscaped area would actually calculate from 20-25%; however, it would still be considerably smaller than the hardscaped area. Chair Krieb asked if there was any rebuttal.

Gerald Bell came forward. Mr. Bell clarified that he had never had an interest in the Parker-Bell property; that his wife was the sole owner. He agreed that there is far more green space than was indicated by Mr. Watkins as Chairman Krieb had pointed out. Mr. Bell said that in his observations, Mr. Watkins is arguing in favor of this project because of the desire to improve the drainage situation on his property that has existed for 46 years. This procedure will require that stormwater detention be engineered as an improvement to the property; therefore, helping alleviate the overall drainage situation for the neighboring properties.

Rick Johnston, 301 West 13<sup>th</sup> Street, Benton, Kentucky was sworn in. Mr. Johnston is a representative of BFW Engineering. Mr. Johnston stated that BFW had not been hired for this job yet; however, they had done some preliminary work. They do have regulations that have to be met. They have to present a design that will not increase the flow of the water to the neighboring property owners. Scott Seiber asked if the changes that needed to be made would require the neighboring property owner's cooperation or could the changes be made to this property alone. Mr. Johnston replied that he thought it would be to everyone's advantage to work together. They think they can help everyone, but permission from the adjacent property owners will have to be obtained. He continued that it is a wet situation and they probably can't solve everyone's problems, but they think they can help them.

Mr. Watkins came forward again. Mr. Watkins explained that during his 46 years there, the water hasn't necessarily collected there, but that it has flowed or oozed through the Cavitt woods. He added that some of his neighbors had said that someone had cut down trees and graded on the Cavitt property and then it flooded their backyard. He said that he is not in disagreement with the engineers or architects and if there is a system that will handle the water, he will be satisfied.

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

Mr. Vernon said that he thought it would be beneficial to all parties involved if they were able to utilize the drainage to the north. Scott Seiber said that can be addressed, but you cannot force the property owners to take advantage of this opportunity.

**Josh Vernon made a motion to approve the Conditional Use Permit for the residential planned development project on the north side of College Farm Road, just west of North 20<sup>th</sup> Street, for Brad Wedel & Glen Peters. In addition, he also moved to approve a 54 space parking variance based on 1.5 spaces per unit. This is contingent upon final plat approval by the Planning**

**Commission, stormwater detention plans being submitted and approved, privacy fencing be installed on the east and west sides of the development next to residential areas and the project meeting all other city regulations. This is with the findings that the drainage will be an improvement to all the neighbor's problems. Justin Pounds seconded the motion and the motion carried with a 5-0 voice vote.**

**Compatibility Hearing: Commercial planned development project located at 201 and 203 North 12<sup>th</sup> Street and 1204 Olive Street – Jimmy John's Gourmet Sandwiches:** Candace Dowdy used a Power Point presentation to show the property at 201 and 203 North 12<sup>th</sup> Street and the property at 1204 Olive Street. Mr. Mike Noonan is proposing to purchase the properties and construct a 3600 square foot building consisting of two 1800 square foot tenant spaces. The property is located in a B-4 zone. 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. This item was reviewed by the Board in January for compatibility and the motion to approve the Jimmy John's project for compatibility failed with a tie vote. In following up with Mr. Noonan on the board's decision he asked if it would be possible for him to go back before the board to present additional information regarding this project since he was unable to attend the January meeting due to a family situation that came about at the last minute. Planning Staff conferred with their attorney Mike Pitman regarding this request and he stated that the PDP process does not specifically provide that a compatibility hearing is limited to one meeting before the BZA and that the applicant should have the opportunity to present the issue of compatibility back to the Board of Zoning Adjustments with any new or additional information the applicant may choose to present. Attorney Pitman also indicated that since the motion to deny ended in a tie vote, it wasn't really definitive. This project is being reviewed as a commercial planned development project because one of the tenant spaces will be a restaurant with a drive thru. Jimmy John's Gourmet Sandwiches will occupy one side of the building and the other tenant space will be used for retail or office space. Ms. Dowdy said that the previous presentation of this proposal resulted in the neighbors being concerned about the installation of a privacy fence or screening. She explained that screening would be required since the adjoining property is R-3 zoned (which can be used for single or multi-family use). The neighbors were also opposed to the entrance off Olive Boulevard and the possible influx of traffic that would be added to their neighborhood. The current site plan has an ingress/egress off both North 12<sup>th</sup> Street and Olive Boulevard. Ms. Dowdy stated that she had spoken to Dickie Walls, Fire Marshal and after he looked at the site plan, he indicated that he would not be in favor of only one ingress/egress to the property with the nature of traffic on 12<sup>th</sup> Street. Mr. Noonan supplied Planning Staff with a rendering of the proposed restaurant along with a site plan with parking and green space shown. The property will total .66 of an acre after all tracts are combined.

Chairman Krieb asked Mr. Noonan to come forward to share his comments.

Mike Noonan, 1101 Robinwood Drive, Paducah, Kentucky was sworn in. Mr. Noonan confirmed that he is the applicant for the proposed project. He stated that he had been working with Jimmy John's for quite some time and had some criteria to meet in trying to find a suitable location for the restaurant in Murray. Basically they needed to be on the 12<sup>th</sup> Street corridor located from McDonald's north to the stadium. After narrowing it down, with the help of a local realtor, Lynda Houck they were able to get the property that is in discussion. Two of the lots were listed by Ms. Houck and the third parcel will be acquired from Mr. Allen Jones. Mr. Noonan said that before coming to the meeting, he decided to look at other properties on 12<sup>th</sup> Street to compare similarities. He said that approximately 70% of the properties on 12<sup>th</sup> Street are zoned B-4 as is this property; thus, they feel that the restaurant is compatible for the area. From Sycamore to Chestnut there are twelve restaurants currently operating and two former ones. Of the twelve, six are in the B-4 zone and each are adjoining residential areas, either R-2 or R-3. The other six are in the B-2 zone and they also abut a residential zone. Four of the six that are in a B-4 zone are on

corner lots with access both on a primary and secondary street. On the south side of the intersection at North 12<sup>th</sup> and Olive, Captain D's and Snappy Tomato both formerly occupied that space and at any point in time, the property could be converted back to a restaurant without having to go before the board because it is in a B-2 zone. In looking at this particular property, they felt it had a lot of benefits for Jimmy John's. It's proximity to Murray State University would make it accessible for students to walk from campus. Mr. Noonan said that what he had heard from the first meeting, the neighbors was concerned that this would be a restaurant similar to McDonald's. Mr. Noonan said that he had asked Jay Page, franchiser of the Paducah restaurant to give him an idea of what kind of business occurred at Jimmy John's and he had indicated that an average of 16 cars visited the drive thru in an hour. Mr. Noonan said that a co-worker of Mr. Page's, Angel Gurley (who is a former Manager of McDonald's on Jackson Street in Paducah) indicated that there were 139 cars at the drive thru in an hour at McDonald's. They think that the McDonald's in Paducah compares in size and amount of business to the one in Murray. Mr. Noonan stated that Jimmy John's is only a sub shop and does not have anywhere near the traffic that McDonald's does.

Jay Page, 5013 Hill Terrace, Paducah, Kentucky was sworn in. Mr. Page stated that he purchased the franchise for Jimmy John's in Murray around two years ago and presently has one store in Paducah that has been opened a little over a year. He added that he has been looking for a piece of property in Murray for that entire time and the primary reason he chose this location was because of the accessibility to MSU campus and the students that do not have a vehicle. Mr. Page said that the proposed restaurant is approximately the same size and layout as the one in Paducah and they feel it will be similar in sales. He said that they are exclusively a sub shop not an extraordinarily busy restaurant. Mr. Page said that they average 16 cars per hour at the drive thru on the weekdays and 10 cars per hour on the weekends. Approximately half of their traffic each day is coming inside the restaurant. This is primarily a lunch restaurant and their slowest time is on the weekends. This will be a locally owned restaurant and Mr. Page will be involved on a daily basis as will Angel Gurley. They consider themselves a great neighbor. They don't cook anything in the restaurant; therefore, they are not venting anything in the neighborhood. Justin Pounds asked if they would have delivery services and if so, how much of their business would be delivery. Mr. Page replied that they do have delivery; however, it does not account for much of their traffic and he anticipated that the majority of the deliveries would be for the MSU dormitories. Mr. Pounds stated that was what they feared as board members, that the delivery driver (as well as others) would exit the facility onto Olive and turn right to make the deliveries to the dorms while avoiding 12<sup>th</sup> Street. Mr. Pounds stated that one of the worst areas for congestion in Murray is on 12<sup>th</sup> Street from Walgreens to Kentucky Fried Chicken and this restaurant would be located right in the center of that congested area. Mr. Pounds stated that he avoids traveling towards 12<sup>th</sup> and Olive for that simple reason. He thinks because of that difficulty, people would be encouraged to use Olive for reasons other than what Olive was intended for. Mr. Noonan said that even if the Murray restaurant did twice the business that the Paducah restaurant does, they would still only generate 1/3 of the traffic that McDonald's does. Mary Anne Medlock stated that she didn't know how the Paducah and Murray restaurants could compare to each other since these numbers are all speculation. She added that Jimmy John's would be welcomed to Murray; however, she does not think that the proposed location would be the right location. Mr. Page said that there are a certain number of people going out to eat daily and that this restaurant would not add traffic; however, it would only redistribute the traffic and he did not think that Olive traffic will increase to the degree that he is hearing from the board. Mr. Pounds said that they were looking for a resolution to avoid the traffic from using Olive when leaving this restaurant. Mr. Page said that he would also be opened to further discussion of that.

Chairman Krieb said as being compared to Subway, in his mind the traffic for Jimmy John's is not going to be excessive even with the delivery service. Mr. Krieb said that he is not sure if any streets in Murray are designated as thru streets; however, he uses Olive Blvd. himself for cutting through to his church. He

doesn't know if it's fair to say that others can't use Olive the same as many choose to use it now. He also said that a stop sign at 13<sup>th</sup> and Olive might discourage others from using that route or at least slow traffic down.

Mr. Noonan said that he had reviewed the uses that are allowed in a B-4 zone and a restaurant is one of the permitted uses. If they should decide to put only a restaurant there on the property, they would not be required to come before the board for approval. Mr. Noonan read the other permitted uses for a B-4 zone for the neighbors that were present. In conclusion he thinks that knowing about this proposal would be better than the unknown if something else should decide to go there; therefore, does feel that this proposal is compatible to the area.

Phillip Moore, 1403 Olive Boulevard, Murray was sworn in. Mr. Moore stated that he is spokesman for the 35 or 40 neighbors that are unanimously opposed to this proposal. He thought the previous discussion had summed everything up that the neighborhood was concerned with such as congestion and safety. He continued that traffic has been generated since Walgreen's and the other drug stores have located on the corners of Main and 12<sup>th</sup> which has caused more traffic issues to the north. The neighborhood feels that their street is very special and would like to preserve the integrity of it as the main entrance to the University; therefore, they do not feel like the proposed restaurant is the proper fit for the corner of 12<sup>th</sup> and Olive. Josh Vernon asked if the board should deny this request for Jimmy John's and a convenience store decided to locate there (which would be a permitted use), would Mr. Moore wish that the decision had been different. Mr. Vernon continued that if the neighborhood was concerned about what might be developed on the corner, he would suggest that they get together and develop the property to avoid the unknown.

Judy Ratliff, 1310 Olive Blvd., Murray was sworn in. Ms. Ratliff works at Murray State University and she has encountered several near misses of automobile accidents on Olive because of delivery truck traffic for 15<sup>th</sup> and Olive. She said that people do not abide by the speed limits and that she has called and reported that to Murray Police Department and nothing has been done about it. She would like for Jimmy John's to reconfigure their site plan to see if there is another way of exiting the property other than on Olive. She is really worried about what this is going to do to the life style on Olive Boulevard.

Terry Strieter, 202 North 13<sup>th</sup> Street, Murray was sworn in. Mr. Strieter said that he has the same concerns as the previously concerned citizens. He stated that this is a compatibility hearing and that Olive Boulevard would definitely be changed if Jimmy John's is allowed because of the exit off Olive. He is against this as it is not the right kind of business for that location. Mr. Strieter stated that when he came to Murray State 35 years ago, Murray State had 6,000 students. It has nearly 11,000 at this time and continues to grow. Mr. Strieter said that the delivery drivers from Jimmy John's, as well as students, will be turning right onto Olive from the Olive exit, he was sure of that.

Linda Grey Houck, 800 Sycamore Street, Murray was sworn in. Ms. Houck is the owner of Grey's Properties which is located on the southwest corner of North 12<sup>th</sup> and Olive. She is well aware of trying to cross or pull out into traffic from that location. Ms. Houck leases the building where her business is located and she is also aware that a restaurant could someday occupy that building. Ms. Houck said that something much less desirable could have chosen this particular site and caused even more of a situation than a low density restaurant like Jimmy John's which is a known entity. She represents Scott Waldrop, the owner of the property. She stated that she indeed would get a commission if Jimmy John's buys the property; however, if they don't buy it, someone else will.

Linda Scott, 1315 Olive Blvd., Murray was sworn in. Ms. Scott said that this property had been compared to Dunkin' Donuts in that it had an entrance off a primary and a secondary street; however, she

does not think there is a comparison at all. She said that Sharp Street is a low traveled residential street and Olive Blvd. is quite the contrary. She also thinks that the Subway comparison is not reasonable because Subway is located in a parking lot and not on the busy corner of an intersection. She is concerned that Jimmy John's had made no improvements to green space as was suggested at the previous compatibility hearing. There were also no changes to the configuration. She was not quite sure why this was allowed to come back before the board because it was not approved the previous month. Ms. Scott said that deliveries would be made for sure to MSU students and the drivers would use Olive Blvd. as the quickest route. The residents do not want Olive to become another 12<sup>th</sup> and Chestnut. She asked for the board to consider not putting an extra burden on the residents by allowing Jimmy John's to locate on the corner of 12<sup>th</sup> and Olive.

Attorney Mike Pitman clarified again why the matter was brought back before the board. In summary, Mr. Noonan had implied that he had additional information that was not previously brought up at the meeting in January. Also, Attorney Pitman said that since the vote resulted in a tie to the motion that was made (to approve that the proposal was compatible to the area), the motion to deny would have probably had the same results. He said that Planning Staff had called and asked him if this could be brought back before the board and based on the previous two facts, he decided that since the proposal wasn't found to be incompatible, his answer was yes to allow them to make another attempt for compatibility. Chairman Krieb added that everyone had expressed the same concerns this month as they had previously. He did not think that it was implied at the previous meeting that the developer should redesign their proposal. Mary Anne Medlock explained that the previous discussions concerning green space would be dealt with during the final approval stage. She also said that Jimmy John's would be a more desirable choice than a convenience store; however, she still did not know if she could support it. Josh Vernon said that his fear was that if the board didn't vote this as compatible, that something less desirable would go on that corner. Scott Seiber agreed. Justin Pounds said that he thinks they all share the same opinion as to the corner. They can approve the known or wait for an unknown that may or may not have to be brought before the board. Jimmy John's looks like a great facility and everyone brags about them coming to Murray.

**Josh Vernon made a motion that the proposed Commercial PDP for Jimmy John's at 201 & 203 North 12<sup>th</sup> Street, and 1204 Olive Street is compatible to the surrounding area. Scott Seiber seconded the motion and the motion passed with a 3-2 voice vote. Mary Anne Medlock and Justin Pounds voted no.**

**QUESTIONS AND COMMENTS:** None

**ADJOURNMENT:** Justin Pounds made a motion to adjourn. Josh Vernon seconded the motion and the motion carried unanimously. *The meeting adjourned at 9:22 p.m.*

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Chairman, John Krieb

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Recording Secretary, Reta Gray