

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, JANUARY 22, 2014
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, January 22, 2014 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, Scott Seiber, Bobbie Weatherly, Linda Scott and Terry Strieter

Board Members Absent: None

Also Present: Candace Dowdy, David Roberts, Reta Gray, Hawkins Teague, Jennifer Tolley, Jacob Reid, Tung Dinh, Sarah Fineman, and public audience

Chairman Krieb called the meeting to order and welcomed all guests and applicants. Ms. Dowdy went over some minor changes from the December 18, 2013 regular meeting minutes. Mr. Krieb asked if there were any additional comments.

Scott Seiber made a motion to approve the BZA minutes from the December 18, 2013 regular meeting as amended. Terry Strieter seconded the motion and the motion carried unanimously.

Public Hearing: Request for building height variance – 507 North 12th Street – Independence Bank: Independence Bank is proposing to build a new bank on the vacant lot at 507 North 12th Street. The design of the new bank will be a one story building with a cupola and a decorative brick feature. With these added features the overall height of the building will be 56 feet 8 inches; thus, requiring a 21 feet 8 inch height variance for the building. The height limitation on buildings in a B-2 zone is 35 feet. Ms. Dowdy used a Power Point presentation to show the property and also a rendering of the proposed building. The bank will continue to use the existing entrance off North 12th Street and will have two means of egress onto Rushing Way. Primary Care, Murray Bank and St. Leo’s Church have all previously received similar variances for cupolas or bell towers. Ms. Dowdy said that all adjoining property owners were notified of the meeting and she had received only one response to the letter. Sid Easley had called and indicated that he had no objections to the request. Ms. Dowdy stated that some of the more recent commercial buildings such as Holiday Inn Express and Hampton Inn have received height variances to accommodate the “typical” prototype building. Ms. Dowdy said that the building height limitation in the B-2 zone is 35 feet while the B-3 downtown business zone height limitation is 75 feet and that in the Industrial zone it is 50 feet. She added that this is an issue that the city will address with Pike Legal in our zoning ordinance update as to whether those height limitations should be adjusted to accommodate more modern buildings.

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

Jacob Reid, Representative with Independence Bank, 1738 Freeman Avenue, Owensboro, KY was sworn in. Mr. Reid said that Ms. Dowdy had done a good job in explaining their request. He proceeded to clear up some of the questions about the bell tower/cupola that had been addressed earlier. He clarified that the building is only one story and that there would be no offices in the cupola area. The bell tower/cupola has a decorative ceiling on the inside and there will be a working clock on the outside. He explained in order to make the tower fit in proportion to the building the tower needed to meet the proposed height. Mr. Reid stated that they had recently built a two story building in Paducah and a three story building in

Owensboro, with others located in Henderson and Bowling Green that are each a closer replica of Independence Hall. This proposal will be the shortest building that they have constructed.

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

Mary Anne Medlock made a motion to approve the request by Independence Bank for a 21 feet 8 inch building height variance at 507 North 12th Street based on the fact there have been other similar requests along the 12th Street corridor and 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. Bobbie Weatherly seconded the motion and the motion carried with a 7-0 roll call vote.

Public Hearing: Conditional use permit to allow residential planned development project at 807 & 809 Coldwater Road – Tung Dinh: On December 17, 2013 the Planning Commission reviewed the Preliminary Plat for this project. After much discussion the item was tabled until Mr. Tung Dinh could take into consideration the concerns that were made by the Commissioners and Mr. Danny Brittain. Mr. Brittain is an adjoining property owner who was concerned about the privacy issues with the two story buildings and the required screening for those properties along College Farm Road. Ms. Dowdy stated that planning staff met with Mr. Dinh on site the day following the December meeting to discuss options that would address the privacy issues. Ms. Dowdy continued that at the Planning Commission meeting the previous night, the commissioners approved the preliminary plat with the contingency that the BZA approve the conditional use permit for this project with any necessary variances and that Mr. Dinh plant Leyland Cypress trees with a minimum height of 7 to 8 feet tall along the south property line within the next 30 days (if possible), to provide additional screening to the adjoining properties along College Farm Road. Mr. Dinh has indicated that the development will take a minimum of 1.5 to 2 years to complete; thus, the trees will probably grow another three to six feet in height, which would provide a more solid screening effect. Mr. Brittain was satisfied with this proposal for screening by Mr. Dinh. Mr. Dinh is also required to immediately make the necessary repairs to the existing privacy fence. Ms. Dowdy used a Power Point presentation to show pictures of the property. She stated that the property is two separate tracts of land, with Quest Fitness Center located on the northern tract at 809 Coldwater Road. The property is zoned B-1 and B-2. (The west portion of the property was rezoned from R-2 to B-1 in 2006.) Mr. Dinh is proposing to add residential apartments to both lots and will need to consolidate this property into one tract of land with a minor subdivision plat. Ms. Dowdy explained that there are 103 existing parking spaces provided for the fitness center and a previously proposed daycare (which never opened). An additional 36 spaces will be added for the residential units, located behind each building in order to make the area more appealing. This development will be meeting parking regulations. The preliminary plat shows the addition of four brick buildings with a total of 28 units. The plat proposes 20 (2) bedroom units and (8) one bedroom units totaling 48 bedrooms. The property at 807 and 809 Coldwater Road has a 24 foot wide shared entrance off Coldwater Road (private drive), that goes all the way to the west property line. Three of the proposed residential buildings will be situated in the green space along the eastern portion of the property near Coldwater Road. The fourth building will be located directly south of the fitness center. The plat addresses a suggestion made from the October meeting, breaking up the two buildings in the southeastern portion of the property (bldgs.3 and 4) and placing a drive aisle between them. A change was also made by opening up access between the existing parking lot and the southeastern buildings, giving an additional means of ingress/egress to those apartments. Sanitation pickup is addressed on this plat with three additional dumpster areas located in accessible areas around the new proposed buildings. The preliminary plat proposes more underground stormwater detention and a detention pond in the northeast corner. The stormwater calculations have yet to be determined, but a

SWEPP plan will be required for this project. Another change to this plat is a new pedestrian sidewalk access connecting to the city sidewalk along Coldwater Road. The sidewalk is located on the south side of the private drive. Dickie Walls, Fire Marshal has reviewed the site plan and has no issues with accessibility to the buildings. A new fire hydrant is needed on the property in order to meet fire code regulations. Ms. Dowdy said that she had a phone conversation with Blake Anderson (representative of Newcomb Oil/Five Star BP station) and they did not have any opposition to the permit.

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

Tung Dinh, 809 Coldwater Road, Murray was sworn in. Terry Strieter asked Mr. Dinh what would be the minimum amount of apartments that he would be able to get by with in order to make the project feasible. Mr. Dinh said that he was not certain, but he could probably give up two units. He continued that Mr. Brittain is satisfied with the proposal that he has made to plant the trees; therefore, he might not have to reconfigure the development at all. Chairman Krieb said that there was some previous discussion about shifting the two buildings at the back of development towards Coldwater Road. He explained that this would give more space between the development and Mr. Brittain's property. Mr. Krieb asked Ms. Dowdy if there had been any further discussion along those lines. Ms. Dowdy said that there had been several suggestions; however, the proposal that is before them at this time seemed to be the best layout. Mr. Brittain's property does not actually line up directly behind the buildings; however, he is in agreement with Mr. Dinh's proposal of the Leyland Cypress trees to act as a buffer and screening. Mr. Dinh stated that the Leyland Cypress trees would be planted all the way to the existing tree line.

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

Sarah Fineman, 202 North 13th Street, Murray was sworn in. Ms. Fineman stated that she had been before the different boards on various occasions voicing her opinion on certain issues. She feels that additional green space (besides a row of trees) means a better quality of life. Ms. Fineman stated that it is a citizen's responsibility to see that when developments such as this are proposed that the quality of life continues to be a part of that. As we have more developments of this nature, we should think about what we want Murray to look like down the road. More traffic will be added to the area. She concluded that it just seems the proposal will add a lot more people to a very small space.

Chairman Krieb asked Mr. Dinh if he had any rebuttal.

Mr. Dinh came forward and stated that it is his intention to keep as much green space as possible. Ms. Dowdy explained that the only way Mr. Dinh is going to provide more green space is to have fewer apartments. Mr. Dinh said that Mr. Kim Oatman is the architect for the drawings and initially they were going to have more buildings; however, they decided that this proposal would be a good fit for the property and provide more green space. Ms. Scott asked Mr. Dinh what type of tenants he expected to have. Mr. Dinh replied that they hoped to attract alumni, young professionals, and teachers since they will be close to campus, but they will also have two bedroom apartments available for families. Ms. Scott said that Mr. Dinh should look at having an area available for children to play if he intended on having families as tenants. Ms. Weatherly asked what Mr. Dinh's peak hours of operation for the fitness center are. Mr. Dinh replied from 4-6:30 pm. She then asked if he managed his rental properties or if he had a manager. Mr. Dinh replied that he had a maintenance man, but he manages the properties himself. Mr. Krieb asked if there would be any plantings along Coldwater Road. Mr. Dinh said that they would be willing to work with the staff and provide some landscaping. He continued that he wants the development to be attractive so that it will hopefully draw additional business for his fitness center. Ms. Medlock said that at this point she thinks they are past trying to reconfigure the layout of the development and she thinks that it is a good overall proposal and livable project. Mr. Seiber said that it should not be the

board's position to micro-manage the development as a lot of planning and money have already gone into the development. He sees as much or more green space and availability for constructing play areas than they have previously seen with other projects. Mr. Seiber said that he is willing to allow Mr. Dinh to work with planning staff in trying to create an aesthetically pleasing environment. Mr. Strieter said that he is somewhat concerned with the amount of units that are being proposed. He added that Mr. Dinh should strive to make the proposal more beautiful as it will prove to be a wise decision later on, since there will be so many other developments to compete with. Mr. Krieb commented that he thought this development will have much less density than others they have approved in the recent past. Ms. Dowdy explained that Mr. Dinh would need to provide a landscaping plan for the project.

Chairman Krieb 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 proposed residential planned development project at 807 & 809 Coldwater Road for Tung Dinh. This is contingent upon final plat approval by the Planning Commission and the project meeting all other city regulations. It is also contingent upon Mr. Dinh working with planning staff to enhance the landscaping and play area to be presented with the final plat approval. Mr. Dinh has 60 days to plant Leyland Cypress trees on the south end of the property to provide privacy screening between building #3 and adjoining R-2 properties. Mary Anne Medlock seconded the motion and the motion carried with a 7-0 roll call vote.

Staff Update: Annual review of conditional use permit issued to The Keg Restaurant to operate as a bar/tavern – 1051 North 16th Street: Ms. Dowdy stated that the Board of Zoning Adjustments approved a Conditional Use Permit on January 16, 2013, for The Keg Restaurant to operate as a bar/tavern at 1051A North 16th Street. The approval was contingent upon them maintaining compliance with all fire codes and that the screening/landscaping, that was required from a variance in 2002, be brought into compliance around the accessory structure, wood and dumpster area. Mr. Yates was asked to work with planning staff to the best of his ability to provide whatever landscaping was possible in order to try to bring this property into compliance. In February 2013, Mr. Darren Yates, owner of The Keg Restaurant constructed a six foot privacy fence that is about two feet off the ground around the pile of wood that he uses for his smoker. He also added privacy panels on both sides of the dumpster. In working with Mr. Yates planning staff determined that based on the distance of the accessory structure from the creek there was not adequate space to put any trees and/or shrubs that would live along the back side of the accessory structure. Ms. Dowdy used a Power Point presentation to show the new screening. Ms. Dowdy added that on January 7th, 2014, she had talked with Fire Marshal Dickie Walls, and he indicated that The Keg Restaurant was currently in compliance with all fire codes and that they had not received any fire code violations this past year. Sgt. Kendra Clere, City ABC Administrator was also contacted and she indicated that The Keg Restaurant had not received any violations for non-compliance since they were approved to operate as a bar/tavern. During the last few months the property at 1051 North 16th Street has been purchased by John King. Ms. Dowdy added that Mr. King indicated that he has made several improvements to the property since he purchased it such as painting the building, replacing the gutters and resurfacing the parking lot to try and improve the overall appearance of the property. Mr. King also plans to add landscaping in the spring.

Staff Update: Annual review of conditional use permit issued to Big Apple Café to operate as a bar/tavern – 1005 Arcadia Circle: Ms. Dowdy stated that The Board of Zoning Adjustments approved a Conditional Use Permit on January 16, 2013, for The Big Apple Café to operate as a bar/tavern at 1005 Arcadia Circle. The approval was contingent upon them maintaining compliance with all fire codes and paving the remaining graveled portion of the parking lot. On August 21st, 2013, David Roberts gave an update to the BZA on the paving of the parking lot. Mr. Roberts stated that he had recently inspected the

site and performed some calculations that he hadn't done previously. Mr. Roberts explained that after 12 years of progression in the paving, there was nowhere on the property to provide storm water detention. In order to provide a detention area there would need to be some pavement removed. Mr. Roberts felt to avoid a waste of time and material that he would recommend to the board that Mr. Chambers only be required to pave the existing southeastern portion of the parking lot. By leaving some of the area gravel it would remain pervious and would be able to catch the water. He said this proposal would not only improve the water quality that drains off, but it would address the issue of gravel that is continuously being scattered onto the pavement at the 10th Street entrance. Mr. Roberts explained that if the Big Apple was required to put the amount of grassy area back that they had in 2006 and 2007, they would lose parking spaces which could prove to be detrimental to the business. Mr. Roberts added that he had told Mr. Chambers if they should do anything to increase the building size or capacity in the future, this matter would have to be revisited. Based on this information the board amended the motion from January 2013, to allow expansion of the grassy area that borders 10th Street and Arcadia, allowing Mr. Chambers to keep the area on the northeastern corner of his parking lot as a graveled surface because this was preferable to granting a variance for stormwater detention. This decision was made in light of circumstances regarding the lack of ability to put in stormwater detention in their parking lot. Ms. Dowdy added that she had spoken to Dickie Walls, Fire Marshal on January 7th, 2014 and he indicated that the Big Apple Café was currently in compliance with all fire codes and that they had not received any fire code violations this past year. Sgt. Kendra Clere, City ABC Administrator was contacted and she indicated that the Big Apple Café had not received any violations for non-compliance since they were approved to operate as a bar/tavern. Mr. Roberts had also discussed with Mr. Chambers that the landscaping on the northeast corner of the property be updated and Mr. Chambers indicated that the situation would be addressed when spring arrives. Ms. Dowdy added that no action is necessary for the board but that these two bar/taverns will be monitored by staff, Fire Marshal and the ABC Administrator.

Discussion on Code Enforcement Officer Position: Ms. Dowdy gave an update on the discussion at the Planning Commission meeting the previous night concerning a Code Enforcement Officer Position. Ms. Dowdy stated that a position for a Code Enforcement Officer has been discussed numerous times in the past; however, it has never been put in the budget. A person has been needed in this position for years to help enforce zoning ordinances and regulations. John Krieb, Ed Pavlick and Mary Anne Medlock have put together a letter addressed to Mayor Bill Wells and the City Council members. The letter requests that the position be created within the police department for a Code Enforcement Officer in the next fiscal year's budget. Ms. Dowdy explained that there are signature lines for the chairmen and members of both the Planning Commission and Board of Zoning Adjustments if they chose to support this request. Mr. Seiber said that he thought a good individual was needed for this position that would not only enforce the laws, but would be a friend to those that they would be dealing with. Ms. Dowdy continued that overall the support of the Planning Commission was very good; however, there was some concern about who would oversee this person. There was also questions concerning whether the position would require an additional staff member or if the duties would be restructured within the city's current staff. These are details that will have to be worked out, but with the letter this should initiate some conversation concerning the position. Mr. Strieter commented that he was in support of this and he thought that Murray has needed this position for some time. Ms. Medlock asked Ms. Dowdy if it would be possible to let the board members know when the discussion meetings would be held so that board members could attend and offer their support. Ms. Dowdy replied that planning staff would send an e-mail to the Planning Commissioners and Board of Zoning Adjustments members to let them know when this item would be on the agenda. Chairman Krieb explained that the intent of the letter is to show their support of the idea, as they all feel that the need is there. Ms. Dowdy said that she had printed the letter on city letterhead for those who wished to sign the letter; they could do so after the meeting. Ms. Dowdy added that the Planning Commission had made a motion concerning this item so that it would show on record that it had been discussed.

Mary Anne Medlock made a motion that the Board of Zoning endorse and move forward the letter of support for a Code Enforcement Officer to be created within the FY-15 budget. Josh Vernon seconded the motion and the motion carried with a unanimous voice vote.

Questions and Comments: Scott Seiber wished everyone a Happy New Year.

Adjournment: Josh Vernon made a motion to adjourn. Scott Seiber seconded the motion and the motion carried unanimously. *The meeting adjourned at 6:10 p.m.*

Chairman, John Krieb

Recording Secretary, Reta Gray