

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, NOVEMBER 19, 2014
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, November 19, 2014 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5th Street.

Board Members Present: John Krieb, Linda Scott, Mary Anne Medlock, Terry Strieter, Josh Vernon, Dennis Sharp and Bobbie Weatherly

Board Members Absent:

Also Present: Candace Dowdy, Robert Jeffries, Summer Grogan, Reta Gray, Attorney David Perlow, Hawkins Teague, Officer Tim Fortner, Shelia Alexander, Mike Love, Lindsey Smith, Michelle Downey, Marsha Dorgan, Sarah Fineman and public audience

Chairman Krieb called the meeting to order and welcomed all guests and applicants. Candace Dowdy swore in new member Dennis Sharp. Chairman Krieb asked if there were any revisions to the minutes from September 17, 2014 regular meeting.

Terry Strieter made a motion to approve the BZA minutes from the September 17, 2014 regular meeting as presented. Linda Scott seconded the motion and the motion carried unanimously.

Public Hearing: Dimensional variance request to place accessory structure in side yard at 502 Stone Ridge Lane – Shelia Wilson Alexander: Candace Dowdy used a Power Point presentation to show the property at 502 Stone Ridge Lane (lots 6 and 7 in Stone Creek Subdivision) that is owned by Shelia Wilson Alexander. In 2008 the BZA approved a 10 foot rear setback variance on an addition to the home leaving it 15 feet off the rear property line. A minor subdivision plat consolidating lots 6 and 7 was approved by the Planning Department and the Planning Commission in April 2008. On August 20, 2014 a letter was sent to Ms. Alexander stating that it had been brought to staff's attention that an accessory structure had recently been placed in the side yard of the property and that accessory structures were only permitted in a rear yard and they had to maintain a minimum of five feet off the side and rear property line. It was explained to Ms. Alexander that she had an option of either moving the building or applying for a dimensional variance to see whether the BZA would allow the structure to remain in the side yard. Ms. Alexander stated that she did not have room in the rear yard to place the structure so she would like to apply for the variance. The accessory structure is located on the north side of the house in the side yard. The structure is a 12 foot x 16 foot storage building which is located eight to nine feet off the rear property line and more than 10 feet from the north side of the house. Planning Staff suggested that Ms. Alexander check the Covenants and Restrictions on the subdivision plat to make sure that she was in compliance with any restrictions for accessory structures. Ms. Alexander spoke to the developer of the subdivision (Greg Williams) and got a written statement from him indicating that he had no objections to the style or type of outbuilding that she had placed on her property. All adjoining property owners were notified. The property owner at 503 Stone Ridge Lane called to inquire about this request and indicated that they had no objections. The property owner of the vacant lot came by the office to inquire about the request and he made no comments whether he was in favor of or against the request. When the boundary survey was prepared, it was noted that the adjoining property to the west (where the house faces Sycamore) has a garage that extends over Ms. Alexander's property line. Ms. Dowdy concluded that she had explained to Ms. Alexander that the storage building could be left in the side yard until she came before the board requesting a dimensional variance.

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

Sheila Alexander, 502 Stone Ridge Lane, Murray was sworn in. Ms. Alexander said that they were not trying to do anything wrong and that they were not aware that putting the building there was not allowed. They had seen another storage building in a side yard nearby and just assumed that it was allowed. The building is sitting five feet off the property line. Ms. Alexander explained that the house that faces Sycamore has a garage that encroaches two – three feet across her property line. Chairman Krieb asked if that property owner had said anything about the building being there. Ms. Alexander replied that they had actually commented that they liked the building. She then concluded that the building's vinyl siding and roof shingles were chosen to coordinate with their brick home.

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

Josh Vernon made a motion to approve the dimensional variance request to allow an accessory structure in the side yard at 502 Stone Ridge Lane based on the facts there is not adequate space in the rear yard for placement of the building and the property is located at the end of a cul-de-sac with no adjoining property to the north. The fact that she has adjacent property with the single home (with an abolished property line between them) makes this a circumstance where it works appropriately for the way that her home is laid out on the site. 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. Terry Strieter seconded the motion and the motion carried with a 7-0 roll call vote.

Public Hearing: Dimensional variance request to allow additional wall sign on front of building at 107 North 12th Street – Mike Love (McDonald's): Candace Dowdy used a Power Point presentation to show the newly constructed McDonald's Restaurant that is located at 107 North 12th Street. On September 8, 2014 Ms. Dowdy said that she was driving past the new building and noticed a sign (that had not been approved) being added to the front of building in preparation for their re-grand opening the following week; thus, she stopped to discuss the matter with Mike Love (franchisee holder). The only signage that had been approved for the front of the building was the McDonald's Golden Arch logo which was 14 sq. feet in size; the sign in question had the name McDonald's on it. Mr. Love indicated that he was aware that the sign had been installed and that there had been some confusion with the sign company on what signage was actually approved. At that time Mr. Love explained that he was prepared to have the sign company remove the sign unless there was something that could be done to allow him to leave it up. When McDonald's originally met with the BZA in July of this year, Ms. Dowdy spoke with a representative from their corporate office prior to the BZA meeting and the individual felt that it wasn't necessary to have the McDonald's name displayed on the front wall facing 12th street. The corporate office sent a representative to the July BZA meeting to request the additional wall sign (Golden Arch logo) to be displayed on the north and east sides of the building. The allowable square footage for signage on the front of the building, facing 12th street, is 53 square feet. The new sign is a total of 32.8 square feet. The total square footage for the new sign and the existing logo sign would be 46.8 square feet which is still under their allowable square footage. Ms.

Dowdy said that she had not received any calls about the additional signage and that Mr. Love was available to answer any questions that the board members had.

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

Mike Love, 195 Valley Road, Paducah, Kentucky was sworn in. Mr. Love presented pictures of three other new McDonald's in the nearby area and passed them around for the board members to view. He commented that the Murray location had actually turned out to be the best looking building. Mr. Love said that he had not been in charge of the signage and it was his opinion that someone from corporate had possibly overlooked the signage situation and should have asked for the variance sooner. He thanked the board for their consideration in the matter.

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

Bobbie Weatherly made a motion to approve the dimensional variance request for one additional wall sign on the front of the McDonald's building at 107 North 12th Street based on the fact that the total square footage of wall signage will be less than what is allowed. 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. Linda Scott seconded the motion and the motion carried with a 7-0 roll call vote.

Public Hearing: Conditional use request to allow a photography studio in an R-2 residential zone at 1101 Sycamore Street – Lindsey Smith: Robert Jeffries used a Power Point presentation to show the property at 1101 Sycamore Street that Lindsey Smith is interested in purchasing for her residence and business. The property is surrounded on all four sides by R-2 (Single Family Residential); however, there is a mixture of different zoning along Sycamore. Ms. Smith has indicated to Planning Staff that her purchasing the home would be contingent upon the Board's decision for her request for a conditional use permit. Ms. Smith would like to operate a photography studio from the residence. Any photography done at her home will be done entirely within the dwelling. A portion of the house on the first floor will be used as her Photography studio; the majority of the photos will be taken offsite in the county on her parent's property. The only pictures that will be taken onsite will be newborn photos; this will be limited due to the fact that it is not her specialty. Ms. Smith will purchase dark-out blinds to create a comfortable and ideal environment for her studio, as well as keeping access light from possibly disturbing nearby property owners. There will be viewing appointments where clients would meet with Ms. Smith to view their photos, these appointments will be limited and not on an everyday basis. It's estimated that she will have 2-3 appointments a week held on the premises. Ms. Smith would only have one client at a time on the premises. There is ample space for parking for four or five cars in the driveway. Staff has informed Ms. Smith that if the board approved the conditional use permit that she would be allowed to have a small unlit sign not to exceed two square feet in size identifying her home occupation. Mr. Jeffries said that adjoining property owners were notified. Mrs. Randolph (whose address is 919 Sycamore) came by the Planning Department and voiced some concerns about the conditional use. She would like for the permit to be allowed only for Lindsey Smith and not the property; thus, if someone else should purchase the property in the future, they would not be able to have a business there unless they came back before the BZA for approval. Mrs. Randolph is also worried that

granting the CUP might open doors for rezoning in the future and she would not like to see that happen. Mrs. Randolph indicated that she and her husband would not be able to attend the meeting because of Mr. Randolph's health issues. Board member Terry Strieter submitted an email from the residents at 915 Sycamore indicating that they feared the possibility of zoning changes in the future if the conditional use permit was approved. They feared that a commercial zoning status would lower the value of their home. They both work and could not attend the meeting. (*Copy of E-mail was submitted as Exhibit A.*) Mr. Jeffries added that the property owner, Michelle Downey, had submitted a letter granting Lindsey Smith permission to pursue the conditional use permit. (*Ms. Downey's letter was submitted as Exhibit B.*) Ms. Dowdy explained that a conditional use permit did not open this property up to re-zoning in the future. She said that it simply would allow this applicant the opportunity to operate a small business from her home. The primary use of the house would be a residence and the secondary use would be a business. Ms. Dowdy reminded the board that if they approve the conditional use permit, they have the right to place conditions/restrictions on it as they should see fit in order to help maintain the integrity of that neighborhood. Ms. Dowdy reviewed the Ordinance concerning home occupations.

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

Lindsey Smith, 94 Todd Road, Almo, Kentucky was sworn in. Ms. Smith stated that she loves the house as well as the neighborhood and has been interested in purchasing the home the entire time she has worked for Ms. Downey (2 years). Ms. Smith explained that at this time her clients are viewing picture shots on-line and making their choices via email. She needs somewhere that clients can come to meet with her where they will feel comfortable for the photo viewing. The only photo shoots that will take place at this location will be for babies. The others will take place at her parent's home in the county. Ms. Smith also does weddings and engagement shots and those as well will be done away from the studio. As far as signage, Ms. Smith said that she would be willing to put the sign wherever the board approved. Ms. Smith continued that she and Ms. Downey had gone to speak to Mrs. Virginia Randolph in order to explain her request for the conditional use permit. Mrs. Randolph had indicated that her main concern was if Ms. Smith decided to move from that residence what would happen concerning the conditional use. Ms. Smith said that her purchasing the house is contingent upon approval of the conditional use permit. If she does purchase the house, she will not take possession until sometime after the first of the year and at that time she would like to replace the front door (on 11th Street) that her clients would be using. Josh Vernon asked how many cars could fit in the driveway. Ms. Smith replied that four or five would fit comfortably in the driveway and she would park in the carport. She continued that there should be ample parking available since she was a single person that would be living by herself and that she would only be meeting with one client at a time. She said that she usually has two or three shoots a week and that shouldn't generate any more traffic than is already there. Ms. Smith revealed that her goal is to eventually grow her business to the point that she can move it downtown; thus, her house will only be used as her residence at that time.

After additional discussion about the number of clients, appointments and cars that could be allowed during a week, Ms. Dowdy explained that the board would have the option of reviewing the item periodically if they should choose. Ms. Medlock said that she thought the nature of the business should not require monitoring and restrictions.

Michelle Downey, 1101 Sycamore, Murray was sworn in. Ms. Downey confirmed that she and Ms. Smith had visited Mrs. Randolph concerning this matter. She stated that Mrs. Randolph was concerned that if Lindsey should sell the house and someone else moved in, whether the conditional use would still be in effect. Another concern was that the permit didn't open any doors in the future to turn the property into a commercial zone. Ms. Downey stated that after they explained what type of business that Lindsey

wanted to have, Mrs. Randolph was much more relaxed about the situation. Ms. Downey said that she went over the neighbors on the west side at 1103 Sycamore (Ryan and Katherine Brooks) the previous night to discuss the matter. She said that they did not indicate that they had any concerns with the proposed business. Ms. Downey stated that she had also spoken to the neighbors directly behind them at 500 South 11th Street and they also had no concerns. Ms. Downey then clarified the parking situation at the home. She has resided at this house with her family for three years in January and they have easily had up to six vehicles (trucks and cars) at one time in the driveway with no problem plus her car (as the seventh car) in the carport. She added that had been a concern of Mrs. Virginia Randolph's when automobiles were parked in the street; they sometime got pinned in. Ms. Downey concluded that there is not a direct sidewalk that leads from the graveled area to the back door; however, there are additional bricks there if Lindsey chose to make a brick pathway.

Tim Fortner, Code Enforcement Officer for the City of Murray was sworn in. Officer Fortner asked Ms. Dowdy if anyone had explained the zoning of R-2 to Ms. Smith. He stated that he was neutral in this matter, but since Ms. Smith was single and was going to be living alone in the house, he thought she should be made aware of the R-2 zoning regulations to maybe avoid a conflict in the future. Ms. Dowdy explained the definition of the occupancy in the R-2 zoning district.

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

Marsha Dorgan, 1622 Miller Avenue, Murray was sworn in. Ms. Dorgan said that she does not think this request should be granted. She has spent 14 years trying to get R-2 zoning to remain R-2. She said that there are many conditional uses in her neighborhood that have not been followed up on. Even though those conditional uses were not for home-based businesses, she still feels that allowing a business in a residential area is not right. Ms. Medlock agreed with Ms. Dorgan's concern on protecting the R-2 zoning district; however, she did not feel that this particular business would render a problem.

Sarah Fineman, 202 North 13th Street, Murray was sworn in. Ms. Fineman said that two different couples that are friends of hers had contacted her and she was speaking on their behalf as well as her own. The first couple was Mr. and Mrs. Randolph. Mrs. Randolph told her that she liked Lindsey Smith very much when she met her. She also indicated that she wasn't sure if the Planning Department representative that she talked to actually understood that she was against this request. The second couple lives next door to Mrs. Randolph and they had expressed that they couldn't attend the meeting and wanted Ms. Fineman to voice their opinion as well. This couple said that even though they think it is great to see a female entrepreneur; they did not agree with the request for the conditional use permit and they thought that it would greatly impact their house, their neighborhood and their R-2 area. Ms. Fineman explained that even though she does not live in this particular area, she lives in a very mixed zoning area and it had been a nightmare for her for many years. It is her opinion that there is no way to control how many people, appointments, or automobiles there are related to a home business. She explained that the integrity needs to be maintained in the R-2 neighborhood. Ms. Fineman closed by saying that if this request is passed with no restrictions, it will be a nightmare and she asked the board members to take this into consideration.

Mr. Jeffries clarified that he had spoken to Mrs. Randolph in his office and she was against anything that would encourage re-zoning in the area and she was very clear with that. She did indicate that she felt comfortable with putting restrictions on the conditional use where it was only allowing Lindsey Smith to operate a photography studio and not for another property owner to come in and have another business at this site.

Chairman Krieb asked if there was any rebuttal.

Ms. Smith came forward and said that she would like to keep the area as an R-2 zoned neighborhood. She loves the atmosphere of the street and the house. She thinks the only thing that will change on the property is that there will be a small sign in the yard. Her intentions are to keep the house nice and inviting for her clients. Ms. Smith did acknowledge that 12th Street isn't far away and it is predominantly commercial.

Chairman Krieb then closed the public hearing and turned the item over to the board for discussion and a motion.

There was discussion on setting limitations on hours of operation for Ms. Smith's clients to visit, the number of clients she could have at a time and how many cars could be in the driveway at one time. Mr. Strieter stated that he was the board member that was contacted by the e-mail from Danette and Tony Page. He said that they are very much afraid of a gradual change in the area (creeping commercialization). Mr. Strieter continued that it was pointed out that 12th Street isn't far away and it is commercial; therefore, it wouldn't be that hard for a change of this nature to happen. He then said that Ms. Smith would like her business to grow, but at what point would she know that it was not appropriate for the business to stay there. Ms. Medlock explained that for many years there was a home-based childcare located at 1107 Sycamore Street. She said there was much more traffic generated from that business than this business will have. She added that she certainly understands and respects the residents' concerns and the need to protect R-2; however, she also believes that this one photography studio will not change the nature of the neighborhood. She said that the Ordinance protects the home-based business situation where there will not be any employees other than someone that lives in the house. Ms. Medlock also stated that she thinks the board should be careful on what kind of restrictions they put on this if it is approved. Restrictions have to be monitored and she does not feel this should be made complicated in terms of how many cars or what hours the business can operate. Ms. Medlock said that she thinks this house is adaptable and that it is a good situation. Sycamore is a mix of residential and business already. Linda Scott said that Sycamore is such an amazing street and she agrees that once a home business situation is started, it could open up the opportunity for others to have home businesses. Then it will have turned into a very busy commercial area. She said that over the years, conditional use has brought in an element to the beautiful older homes that destroys the integrity of the gorgeous neighborhoods; therefore, she thinks they should be very careful about allowing commercialism to come into a residential area of any kind. Mr. Vernon said that he is against businesses coming into historic neighborhoods and changing the atmosphere; however, in this circumstance he would encourage the board to step back and take a look at how cities grow. This is a method of developing a home-based business into something larger and he thinks these types of businesses should be encouraged. Chairman Krieb said that with the new Code Enforcement Officer there is now the ability to respond to complaints made to the police department, the planning staff or simply the board members' own observations. If there are complaints, that situation can be brought back before the board.

Josh Vernon made a motion to approve the request for a conditional use permit to allow Lindsey Smith to operate a photography studio as outlined in the staff report in an R-2 zoning district at 1101 Sycamore Street. The conditional use permit is only valid as long as Lindsey Smith owns and resides on the property and contingent upon adherence to the other regulations in the zoning ordinance such as no employees on the premises and with the restriction that the location of the business sign (as regulated by the sign ordinance) be located on the face of the building itself and not on Sycamore Street. Mary Anne Medlock seconded the motion and the motion carried with a 4-3 roll call vote. Linda Scott, Terry Strieter and Bobbie Weatherly voted no.

Election of Officers: Ms. Dowdy stated that it was time to elect BZA officers for the upcoming year. The current slate is: John Krieb, Chairman; Josh Vernon, Vice-Chairman; and Scott Seiber, Secretary. The new officers will take effect January 1, 2015. Scott Seiber recently resigned from the board; thus, Linda Scott volunteered to serve as Secretary.

Mary Anne Medlock made a motion to elect John Krieb, Chairman; Josh Vernon, Vice-Chairman; and Linda Scott, Secretary for the 2015 Board of Zoning Adjustments officers. Terry Strieter seconded the motion and the motion carried unanimously.

Questions and Comments: Mary Anne Medlock asked for a report from the Code Enforcement Officer on the progress that is being made. Officer Fortner said that he wouldn't be able to make comments without his paperwork and he did not bring that with him to the meeting; however, he would be prepared to share information at the next meeting. Linda Scott said that Officer Fortner had been out and visible and she had heard several positive comments concerning that.

Adjournment: Josh Vernon made a motion to adjourn. Terry Strieter seconded the motion and the motion carried unanimously. *The meeting adjourned at 6:13 p.m.*

Chairman, John Krieb

Recording Secretary, Reta Gray