

**MURRAY BOARD OF ZONING ADJUSTMENTS  
REGULAR MEETING  
WEDNESDAY, MARCH 18, 2015  
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, March 18, 2015 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, Dennis Sharp, Mary Anne Medlock, Terry Strieter, Josh Vernon, Bobbie Weatherly, and Mike Faihst

**Board Members Absent:** None

**Also Present:** Candace Dowdy, Robert Jeffries, Summer Grogan, Reta Gray, David Roberts, Attorney David Perlow, Hawkins Teague, Bunnarath Mao, Danny Steele, Sarah Fineman, Phil Moore, Dan Lavit, Chuck Foster, Tuan Dinh, Matt Bartholomy, Scott Adams, Joseph Dooley, Marcia Dorgan and public audience

Chairman Krieb called the meeting to order and welcomed all guests and applicants. Candace Dowdy swore in new member Mike Faihst. Chairman Krieb asked if there were any revisions to the minutes from January 21, 2015 regular meeting. Changes were noted.

**Terry Strieter made a motion to approve the BZA minutes from the January 21, 2015 regular meeting as corrected. Josh Vernon seconded the motion and the motion carried unanimously. Josh Vernon recused himself at 4:34 p.m.**

**Public Hearing: Setback variance on a monument sign to be constructed in the 50 foot clear zone on the corner of Highway 121 Bypass North and North 16<sup>th</sup> Street – Chad and Missy Cochran:** Candace Dowdy used a Power Point presentation to show the property at the northwest corner of North 16<sup>th</sup> and Hwy 121 Bypass North that is owned by Chad and Missy Cochran. The property is zoned B-2 (Highway Business). The owners are looking at building an office building on this property and they would like to place a monument type free-standing sign within the 50 foot clear zone. A clear zone is measured 50 feet from the intersection of two right-of-way/property lines and then the 50 foot points are connected – creating a triangular zone in which no objects that impair vision are allowed. Based on the site plan, the property lines are currently approximately 62 feet from Hwy 121 and 51 feet from North 16<sup>th</sup> Street. Planning Staff does not think there will be any issues with the location of this sign. They also do not think that placing the sign at the proposed site will obstruct the vision of traffic at this intersection. The proposed sign will be 60 square feet in size with two 30 inch columns and have an overall height of eight feet. The monument sign's dimensions fall within the regulations for this type of development.

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

Josh Vernon, 1607 Keenland, Murray was sworn in. Mr. Vernon stated that he was a representative for Chad and Missy Cochran since they both had to be out of town on business. Mr. Vernon explained the drawings indicating the measurements from the streets and where the clear zone is located. Mr. Vernon said that consideration was taken for the future widening of Hwy 121 Bypass. The owners will be asking for a variance of 17 feet 6 inches of the clear zone triangle. He concluded that the placement of the sign will not create any new problems for that intersection.

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

**Terry Strieter made a motion to approve the setback variance request to allow the placement of the monument sign (as presented in the proposed site plan) within the 50 foot clear zone located at 1601 HWY 121 Bypass North since the sign does not obstruct the driver's vision and does not detract from the essential character. Bobbie Weatherly seconded the motion and the motion carried with a 6-0 roll call vote. Josh Vernon re-entered the meeting at 4:49 p.m.**

**Public Hearing: Conditional use to allow a liquor store to operate with a drive-thru window in a B-3 Zoning District located at 317 Chestnut Street – Global Wine and Spirits:** Ms. Dowdy used a Power Point presentation to show the location of Global Wine and Spirit's at 317 Chestnut Street. This is the former location of Boulder's. Mr. Pardeep Rachan has recently purchased the property and would like to have a drive-thru window at this location. Per the Zoning Ordinance, any restaurant or retail sales business with a drive up window can be permitted as a conditional use in a B-3 Central Business District. The drive-thru window will be located on the east side of the building. The east elevation displays a side door and three windows; the first window will be converted into a drive-thru window. The lane will wrap around the south side of the building and up to the window located on the east. Existing parking will be restriped to accommodate the drive-thru lane and window.

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

Steve Brown, 3235 River Oaks Boulevard, Paducah, KY was sworn in. Mr. Brown explained that the proposal is to put in a pick-up window on the east side of the building. This will allow the customer to drive up, place their order, pick up and go. There will be no outdoor speaker box. The parking direction has been changed on the east side of the building. There will be a front door and emergency door at the back of the building. The door on the east side of the building will be left, but will be locked where no one can enter or exit it. The handicap accessibility ramp will need to be moved. The board members recommended that the handicap ramp be moved to the lower area on the north side of the building where handicap individuals will not be required to cross traffic.

Chairman Krieb asked if there was anyone that wished to speak in opposition to the conditional use application. No one came forward; therefore, Chairman Krieb closed the public hearing and turned the item over to the board for discussion and a motion.

**Mike Faihst made a motion to approve the request for a conditional use permit to allow Global Wine and Spirits to operate a drive-thru window in a B-3 Zoning District located at 317 Chestnut Street. He also recommended that they move the handicap parking to the north side of the building towards the west end to alleviate handicap access across the drive-thru. Dennis Sharp seconded the motion and the motion carried with a 7-0 roll call vote.**

**Public Hearing: Dimensional Variance request for accessory structure to be placed in front yard at 1306 South 12<sup>th</sup> Street – Suite B – Greenspace Properties:** Ms. Dowdy used a Power Point presentation to show the property at 1306 South 12<sup>th</sup> Street. Tony Nolcox, (owner of the property) operates a small café known as Cove Café next to the Treasure Golf along with his partner Jock Bingham. Mr. Bingham

is proposing to use an outdoor smoker for cooking at this location. The health department requires that the smoker have a covering so they are requesting to place a 12 foot x 21 foot metal carport in the fenced in area out front. Ms. Dowdy stated that she explained to Mr. Nolcox that metal carports are considered to be accessory structures which are only allowed in rear yards. This property does not have much of a rear yard; thus, the request for placing the structure in the front of the building. Questions were asked by Board members regarding the size, schematics, design, surface, and nature of the structure and grounds.

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

Tony Nolcox (Greenspace Properties), 1211 Coyote Ridge Road, Cadiz, Kentucky was sworn in. He explained that he did not want to construct a permanent structure to house the grill since he did not know what the future would be for his business. Mr. Nolcox reiterated that there was not enough room in the back of the property for a cooking structure since the fire code states that the cooker has to be at least ten feet from the building. Mr. Nolcox said that the fenced in area is for outdoor eating and that would be a convenient location for the cooker.

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

**Terry Strieter made a motion to deny the dimensional variance request for a 12 foot x 21 foot metal carport structure to be placed in the front fenced in area at 1306 South 12<sup>th</sup> Street since this carport will not be in public interest in terms of aesthetics. Josh Vernon seconded the motion and the motion carried with a 7-0 roll call vote.**

**Compatibility Hearing: Commercial Planned Development Project at 201 & 203 North 12<sup>th</sup> Street and 1204 Olive Street – Murray Donuts:** Robert Jeffries used a Power Point presentation to show the properties at 201 & 203 North 12<sup>th</sup> Street and 1204 Olive Street. He explained that Mr. Mao from Murray Donuts had contacted the Planning Department with interest in developing the property and constructing a building with three units. One unit would be occupied by his business Murray Donuts; the other two units will be leased out to permitted uses in a B-4 Zoning District. The property is located in a B-4 Medium Density Business District and is surrounded by B-4 to the north and east, B-2 (Highway Business District) to the south, and R-3 (Multi-family) to the west. Mr. Jeffries explained that a bakery is listed as a permitted use in this zone but the definition of a bakery, as defined in the Zoning Ordinance, limits a bakery to only ten indoor seats. Mr. Mao is interested in having up to 30 indoor seats. (He currently has 20 seats available at his location in Olympic Plaza.) Because of the amount of desired seating, Murray Donuts would not be able to meet the definition of a bakery and would be required to go through the Planned Development Project process. Mr. Jeffries explained that the site plan is showing Murray Donuts occupying the unit on the south side with a pick-up window. (There will be no outside speaker for placing orders and there will be no delivery service.) The site plan also shows two exits from the property, one off North 12<sup>th</sup> and the other off Olive. The hours of operation will not intrude into evening hours as he will be closing at 5:00 pm on Monday through Saturday and at 2:00 pm on Sunday. Mr. Jeffries reviewed the goals of the Comprehensive Plan as it pertains to this item. The Planning Staff's professional opinion to this proposal would be in support of the project if the BZA decides that it is compatible to the surrounding area. Mr. Jeffries passed around a copy of the Planning Staff's statement to the board members for their review. The buildings that are

currently located at 201 and 203 North 12<sup>th</sup> Street are both owned by the same business and the business is operating with both buildings. The house at 1204 Olive is vacant and has been since 2013; therefore, the home has already lost its grandfather's clause as residential. Planning Staff received two e-mails and Board Member Terry Strieter delivered an email to the Planning Staff from a property owner along Olive Boulevard (*The e-mail copies were entered as Exhibits A, B, & C*). Mr. Jeffries read highlights from emails and then passed them around for the board's review. There was some discussion concerning the update of the Zoning Ordinance to a more modern document that would be more appropriate for today's situations. Ms. Dowdy stated that Planning Staff had discussed the development of this property with the Fire Marshal (Dickie Walls) and he has indicated that it would be necessary to have two means of access to the property. Chairman Krieb asked Mr. Mao to come forward.

Bunnarath Mao, 1104 Sycamore Street, came forward. Mr. Mao explained that he chose this property because it was the most desirable spot for a bakery. He referred to his previous discussions with Planning Staff concerning B-4 permitted uses. Mr. Mao said that he was there because he wants more seating available for his customers. Sometimes there are families or groups of students that meet at the donut shop and seating is very limited. Mr. Mao showed pictures and a video of previous days at Murray Donuts to depict the family atmosphere where customer convenience is his first priority.

Danny Steele, 109 Birchwood, Murray came forward. Mr. Steele stated that he had been helping Mr. Mao with the project layout, size and architectural elements of construction for a new building. Mr. Steele explained that Mr. Mao had been in business for five years at his current location and he will be the anchor tenant of the new building. An investment as this usually attracts a business with a large impact to the area along with a speaker for a drive-thru window. Mr. Steele said that comparing this proposal to other potential users reveals that this proposal will be the best fit for the property based on the low impact it will have to the area. He concluded that there are plans to install a large privacy fence in the back of the proposed building for screening.

Sara Fineman, 202 North 13<sup>th</sup> Street, Murray came forward. Ms. Fineman is against the proposal. Her property backs up to the properties along the west side of North 12<sup>th</sup>. She stated that for years she has battled the businesses that have come and gone from the area. She then showed pictures of the fence in disrepair that adjoins her backyard and the trash that has blown over the fence into her yard from adjacent businesses on North 12th. Ms. Fineman presented a petition from 2013 (*Exhibit D*) signed by 76 neighbors when Jimmy John's was proposing a new restaurant at this location. She referred to the Comprehensive Plan and quoted that *a proposal is not supposed to impact the people that are adjacent to it*. She said that it is her opinion that this proposal does impact them. She agreed that Murray Donuts is a business with a lower impact; however, she would like for the board to vote "no" for this proposal.

Phil Moore, 1303 Olive, Murray came forward. Mr. Moore stated that he would reiterate the comments that had previously been made referring to the Comprehensive Plan. He said that this project has to be environmentally well planned with green space incorporated. It needs to be compatible to Murray State University since Olive is the main entrance to the university. He added that the intersection at North 12<sup>th</sup> and Olive is already very busy and he sees a number of near accidents almost every day. With the numbers increasing in the traffic that will be brought by this proposal, he foresees additional accidents. He asked that the board members consider the neighbors as they make their decision.

Dan Lavit, 1321 Olive Blvd, Murray came forward. Mr. Lavit stated that he agreed with Sarah and Phil's earlier statements. He also added that the proposal for Murray Donut's sounds great, but that business might not always be there. There could be another owner that has different plans for the drive-thru.

**Mary Anne Medlock made a motion to approve the proposed planned development project, consisting of a bakery with up to 30 indoor seats and two additional units to be leased to permitted uses in a B-4 Business District, as being compatible to the surrounding area with consideration of the continued wellbeing of the historic neighborhood in development of preliminary and final plats. Josh Vernon seconded the motion and the motion carried with 6-1 roll call vote. Terry Strieter voted no.**

**Public Hearing: Conditional Use request to allow indoor climate control storage units in a B-1 Zoning District located at 1407 Main Street – T. C. Dinh:** Robert Jeffries used a Power Point presentation to show the facility at 1407 Main Street. This building is owned by T.C. Dinh. Mr. Dinh would like to convert the area directly behind Shear Elegance Salon (the space previously used by Vapers Lounge and the old pool hall) into a climate controlled storage facility. The facility will consist of 18 units. Five units will have 100 square feet; eight units will have 80 square feet; and five units will have 24 square feet. The facility will have two entrances; one on the east side of the building and another one on the south side of the building. The entrance on the south side of the building will have a French-door style entrance which will accommodate larger storage items. The first level of the building will retain the two retail spaces currently occupied by El Rancho Market and Shear Elegance Salon. The ten one-bedroom residential units will remain on the upper level of the building. Ms. Dowdy reviewed that Mr. Dinh had come before the Planning Commission previously with another proposal. At that time, the item was tabled; thus, Mr. Dinh took the comments and incorporated them into a new proposal at this location.

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

Chuck Foster, 1614 The Lane, Murray was sworn in. Mr. Foster stated that he was representing Mr. Dinh. Mr. Foster reviewed the two different proposals that Mr. Dinh had recently made on this property. With this third proposal, Mr. Dinh has decided to turn some of the downstairs area into storage. The storage units will be opened to the public, but would be mostly convenient to the tenants next door at Jamison Place and college students. There is plenty of room for parking, loading and unloading on the side and in the rear of the building. The climate controlled units vary in size for different individual needs. Mr. Foster said that they do not feel this proposal will generate that much additional traffic to the area. Ms. Medlock asked if the façade would be updated in this proposal. Mr. Foster replied that the changes to the façade were recommended with the proposal that showed the entire building as residential units.

Tuan Dinh, 1007 Walnut Street, Murray was sworn in. Mr. Dinh said that he plans on repainting the entire building to make it look more attractive. He continued that he would add green space in the front and a new sidewalk.

Matt Bartholomy, 1411 Main Street, Murray was sworn in. Mr. Bartholomy owns 1409 and 1411 Main Street. He has no objections to this proposal. He thinks that this proposal will actually limit traffic. Mr. Bartholomy stated that Mr. Dinh had been a good neighbor and it is his opinion that the storage units will be a good fit and he would like to see the request approved. Mr. Vernon asked Mr. Bartholomy if there was ample room for trucks to turn around in the back. Mr. Bartholomy stated that he had seen 18 wheelers turn around there when the area was quite smaller and now that Mr. Dinh has expanded the parking in the rear, he thinks that there would be ample room for large trucks to turn around.

Scott Adams, 375 Day Lane, Dexter, Kentucky was sworn in. Mr. Adams is the owner of Jamison Place that is directly to the east of Mr. Dinh's property and he also owned the Vaper Station that was previously located in Mr. Dinh's building. When Mr. Adams was developing his property, construction trucks were

in and out through the area in the back of Mr. Dinh's building and it is his opinion that there is sufficient room for a U-Haul. Mr. Adams has had numerous conversations with Mr. Dinh in trying to come up with a solution to his dilemma. There are not a lot of retail spaces that would be prosperous on that property; however, he does think that this is a good proposal. Mr. Adams added that if the request is approved, he would probably be the first in line to rent a space.

Joseph Dooley, 7711 Hwy 641, Gilbertsville, KY was sworn in. Mr. Dooley is the Senior Officer with Southeastern Real Estate. He stated that he's had the occasion to drive a truck behind Mr. Dinh's building and you can get a truck in and out of the area in discussion. He has also operated a storage business similar to this and it will require no additional infrastructure and it precipitates no additional traffic. This proposal appears to be a viable use.

Bunnarath Mao, 1104 Sycamore, Murray was sworn in. Mr. Mao owns the property south of Mr. Dinh's. He said that everyone has things that need to be stored and he thinks the rental space would be a benefit to the business owners nearby.

Chairman Krieb asked if there was anyone that wished to speak against the request for the conditional use permit.

Marcia Dorgan, 1622 Miller Avenue, Murray was sworn in. Ms. Dorgan is against the conditional use permit. She stated that everything that she has seen during the last 15 years that was granted a conditional use has deteriorated and accumulated trash. This particular property is directly across from MSU and Ms. Dorgan sees the need to improve and make the area more appealing. It is her opinion that there are too many conditional use permits approved throughout the year where the conditions are never enforced.

Chairman Krieb asked for rebuttal.

Mr. Foster rebutted. He stated that this type of storage would be in-door which is different than outdoor storage. He does not feel that garbage would accumulate around the exterior of these type units. The purpose for this proposal is to bring in funds where Mr. Dinh can make improvements to the building.

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

**Mike Faihst made a motion to approve the request for a Conditional Use Permit to allow an indoor climate control storage facility to be located in a B-1 Zoning District at 1407 Main Street and to improve the streetscape. Bobbie Weatherly seconded the motion and the motion carried with a 7-0 roll call vote.**

**Compatibility Hearing: Commercial storage units as a Planned Development Project at 713 South 12<sup>th</sup> Street – T. C. Dinh:** Robert Jeffries used a Power Point presentation to show the property behind the Vernon's Pawn Shop building at 713 South 12<sup>th</sup> Street. The property is zoned B-2 (Highway Business) and is owned by T. C. Dinh. The property both to the north and south are zoned B-2 and R-2 (Single Family Residential) zoning is located to the east. Mr. Dinh would like to build seven storage unit buildings on the property. The property is landlocked; however, there will be access off 12<sup>th</sup> Street from two access easements as approved on a minor subdivision plat in 2005. The buildings will run parallel east to west. One building will have 22 storage units and the remaining six buildings will have 18 units in each building. The total number of storage units will be 130. The units will range in size from 50 square feet to 150 square feet. Mr. Jeffries referred back to the goals set in the Comprehensive Plan. He then made statements concerning

the project's ability to help achieve the goals and what could be adjusted so that it could align to the goals in the Comprehensive Plan. Mr. Jeffries stated that they had discussed the proposal with the Fire Marshal and he indicated that it would need to be put into hard surface so that emergency vehicles could access the property.

Chairman Krieb stated if there was anyone that wished to make any comments about this proposal to please come forward.

Chuck Foster came forward. Mr. Foster said that there should be adequate space available for stormwater detention. He then explained that he thinks this proposal is compatible to the area as the property is zoned B-2. The surrounding area is mostly commercial and there are similar storage units across 12<sup>th</sup> Street. Mr. Foster concluded that he would like to see an attractive screening used as a buffer next to the residential area.

Joseph Dooley came forward. Mr. Dooley stated that there is currently a natural buffer on the east side of the property and if additional evergreens and trees were added, that would make an attractive suitable buffer. He said that he was not involved with the original layout of this project; however, he would be tweaking it to accommodate the drainage system. He reiterated that storage units will require no additional infrastructure and they precipitate no additional traffic. The project will not be that visible from South 12<sup>th</sup> Street but his design would have earth tones and a lot of landscaping where it would blend in with the neighborhood. Mr. Dooley stated that this proposal looks to be financially feasible and in his opinion, it is the highest "best use" for the property.

Tuan Dinh came forward. Mr. Dinh said that he has owned the property for over 10 years now. He has thought of building retail in that area before, but since it is so far off the road he did not feel that would be a good investment. Mr. Dinh said that he thinks his proposal will be the best use for the property and it will also bring in more taxes for the City of Murray once it is developed. It is Mr. Dinh's opinion that the storage units will be good for him and for the city.

Chairman Krieb asked for additional discussion and a motion from the board.

**Josh Vernon made a motion to deny the proposed Planned Development Project and find that it is not compatible to the surrounding area based on the findings of the detracting nature that it will be to the residential surrounding neighborhood and not an enhancement to the commercial district. Mary Anne Medlock seconded the motion and the motion failed with a 3-4 roll call vote. John Krieb, Mike Faihst, Dennis Sharp and Bobbie Weatherly voted no.**

**Mike Faihst made a motion to find the proposed Planned Development Project consisting of a total of seven storage unit buildings to be located behind Vernon's Pawn Shop at 713 South 12<sup>th</sup> Street as being compatible to the surrounding area. Bobbie Weatherly seconded the motion.**

Mary Anne Medlock called for question. Ms. Medlock wanted to know how the proposal was compatible when the other storage buildings in the area are in a B-1 section on Whitnell. Mr. Faihst replied that this proposal will generate income for the city, provide a place for storage on

the south side of town and will not be that visible from 12<sup>th</sup> Street. Bobbie Weatherly said that she also agreed with Mr. Faihst and she thought it was compatible to the area.

**A roll call vote was taken and the motion passed 4-3.** *Mary Anne Medlock, Terry Strieter and Josh Vernon voted no.*

**Questions and Comments:** Chairman Krieb stated that the board recognizes the comments from the residents on Olive Street. He recommended that Planning Staff retain copies of pictures presented and any other information that is relevant to the Murray Donut proposal such as the condition of the fence on the back side of The Cookout and the trash issue. Mr. Krieb said that he thought the Code Enforcement Officer should be asked to look into this and deliver the appropriate actions. Mr. Vernon commented he would like to see the transition between the residential and commercial districts improved. Mary Anne Medlock said that she thought there was a very good comment made in a letter presented about putting together a group for livability growth and she would like to encourage the individual to continue that conversation with the Mayor and City Council. Terry Strieter indicated that he is concerned about the long term viability of older neighborhoods. He agreed with Ms. Medlock's comments about getting people together to see how we can aggressively build the city with nice aesthetically looking buildings without encroaching on older neighborhoods.

**Adjournment: Josh Vernon made a motion to adjourn. Mike Faihst seconded the motion and the motion carried unanimously.** *The meeting adjourned at 7:04 p.m.*

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Chairman, John Krieb

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Recording Secretary, Reta Gray