

**MURRAY BOARD OF ZONING ADJUSTMENTS
SPECIAL CALL MEETING
WEDNESDAY, FEBRUARY 8, 2017
4:30 P.M.**

The Murray Board of Zoning Adjustments met in special call session on Wednesday, February 8, 2017 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5th Street.

Board Members Present: Josh Vernon, Jim Foster, Terry Strieter, Mike Faihst, John Krieb, and Bobbie Weatherly

Board Members Absent: Dennis Sharp

Also Present: Attorney David Perlow, Maurice Thomas, Danna Clayton, David Roberts, Gerald Gilbert, Tammy Gingles, Amanda ZeRuth, Laura Sullivan-Beckers, Christopher Toddy, Luke Crawford, Tony Thompson, Ben Buchanan, Sue McNeary and public audience.

Chairman Krieb called the meeting to order and welcomed all guests and applicants. He then asked for a motion to approve the minutes from the December 21, 2016 BZA meeting.

Mike Faihst made a motion to approve the minutes from the December 21, 2016 BZA meeting as presented. Josh Vernon seconded the motion and the motion passed unanimously.

Public Hearing: Conditional use permit to operate a retail sales business in a B-1 zone located at 212 North 15th Street – Ralph and Tammy Gingles: David Roberts explained that Mr. and Mrs. Gingles own the property at 212 North 15th where they would like to open a retail business consisting of home décor and gifts. He described the type of businesses that are allowed in the B-1 zone. Since this type of business is not specifically listed as a permitted use, a conditional use is being applied for.

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

Tammy Gingles came forward and was sworn in. Ms. Gingles revealed that since they have not had any luck in renting this property, she has decided to open her own retail store at this location with a target date of February 13th. Ms. Gingles indicated that parking has been an issue with the property; however, she believes that if she opens a retail store with merchandise that women want, that they will find a way to shop there. The space was recently renovated and at that time a few walls were removed creating one large overall space. Ms. Gingles showed the board members pictures of the new layout of the store with the entrance and exit doors marked. The hours of operation for Rose Mary Market will be Tuesday-Friday 10 a.m.-5 p.m. and Saturday 10 a.m.-2 p.m. and they plan to reuse an existing sign.

There was no one that spoke in opposition to the request; therefore, the public hearing was closed and the item turned over to the board for discussion and a motion.

Josh Vernon made a motion to approve the request for a conditional use permit to allow a retail sales business to operate in a B-1 zoning district located at 212 N 15th St with the findings of fact being that the existing facility is not such a large facility that would cause

significant impact on the traffic in the area and that with the proposed operating hours, it should work quite well with the surrounding businesses. Mike Faihst seconded the motion and the motion carried with a 6-0 roll call vote.

Public Hearing: Dimensional Variance request for two off-street parking spaces and a wall mural located at 212 North 15th Street – Ralph and Tammy Gingles: The proposed retail business is approximately 1200 square feet and will require six parking spaces. The number of off-street parking spaces at this location is four; thus, a two space parking variance is being requested. Mr. Roberts explained that public parking spaces are there to help utilize some of the shops and businesses in the area even though the other merchants there do share their parking spaces.

The Gingles are also requesting a wall mural on the south wall which is 14 feet high by 77 feet long. Mr. Roberts showed a proposed rendering of the mural with the name of the business (Rose Mary Market) printed on the wall. He then explained that if the name of the business was used in the mural, the mural would be changed into an advertising sign. The zoning ordinance prohibits advertising signs painted on the walls; however, if the board should view this property as a corner lot, they would be allowed to construct a 54 square foot advertising sign on the south wall. Ms. Gingles has indicated that the purpose of adding a mural would be to facilitate students or others to be able to take photographs and at the same time it would “dress up the wall”.

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

Ms. Gingles came forward. She referenced how appealing larger cities with painted murals are. The Gingles do not think of their proposal as a sign advertising their business; they think of it as simply a mural. She said that they are willing to redesign their proposal. They could paint the wall white, remove the name of the business and only have a black outline of the state of Kentucky with random black crosses.

There was no one that spoke in opposition to the request; therefore, the public hearing was closed. Both the off-street parking space variance and the mural request were discussed by the board.

Mike Faihst made a motion to approve the dimensional variance request for two parking spaces located at 212 North 15th Street based on the fact that the prior request was approved for the same lot. Jim Foster seconded the motion and the motion carried with a 5-1 roll call vote. Terry Strieter voted no.

Jim Foster made a motion to approve the request to allow a mural on the south wall of the building located at 212 North 15th Street subject to the name of the business being omitted from the mural. Mike Faihst seconded the motion. The motion was defeated with a 3-3 roll call vote. Terry Strieter, Josh Vernon and Bobbie Weatherly voted no.

Mr. Roberts clarified that if Ms. Gingles wishes she can come back before the board at a later date with a new request, more information and a new rendering of a proposed mural; however, at this time she is only allowed to paint the south side of the building.

Public Hearing: Conditional use permit request to operate an in-home daycare and pre-

school as a home occupation at 1501 Chaucer Drive – Amanda ZeRuth: Gary and Amanda ZeRuth own and reside at this R-2 zoned property which is located in Canterbury Estates. Planning Staff was advised that the residents were possibly operating a daycare from their home. At that time the property owners were notified and the home occupation process was explained to them. The ZeRuth's weren't aware that they needed a business license or a conditional use for a home occupation. Initially they were going to apply for a conditional use permit to operate an in-home daycare with up to two children and an in-home pre-school with up to three children as a home occupation; however, since then they have decided to take the pre-school out of the request all together. The state requires certain responsibilities that are to be met for daycare centers. Ms. ZeRuth has had conversations with a state representative that has provided her with information to proceed. Mr. Roberts reviewed the restrictions for a home occupation. Since Ms. ZeRuth is unable to meet those restrictions, she is requesting a conditional use permit to allow her permission to operate the daycare. Ms. ZeRuth has two children that are considered full time plus her own on Monday thru Friday (7:45 a.m. - 5:15 p.m.). She also has three others that are part-time on Monday thru Friday (8:15 a.m. - 11:30 a.m.). She will be closed from Mid-December until Mid-January and only open on Tuesdays and Thursdays in June and July. Letters were sent to adjoining property owners. Pictures were shown of the property and fencing in the yard.

Chairman Krieb said that he had asked Planning Staff to compile some information on business licenses and daycares in residential areas for the surrounding area and he shared that information at that time. According to the staff's report, there is only one daycare that is currently active in a residential area.

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

The following people came forward to speak in favor of the request and were sworn in individually: Amanda ZeRuth, Laura Sullivan-Beckers, Christopher Toddy, Luke Crawford, Tony Thompson, Ben Buchanan, and Sue McNearly.

Ms. ZeRuth thanked the board for hearing her request. She did not know that she was in violation and apologized for that. She would like to bring the situation into compliance. The ZeRuths moved to Murray two years ago. They love their home and would not do anything detrimental to the neighborhood. Ms. ZeRuth described the house and then showed additional pictures of her property. She explained the state's square footage requirements for a daycare and said that she was well within their guidelines. Ms. ZeRuth's driveway will hold up to six cars at a time. She has been keeping two children who live in the neighborhood; therefore, the parents mostly walk their children to her home. On any given day she will never have more than three half-day children or six children total. The children's ages range between two and four. It is Ms. ZeRuth's belief that home daycares seem to be more desirable today than a business district facility daycare. She tries to provide a "grandmother atmosphere". She has no paid employees but sometimes parental volunteers. She has a meeting set up with the state representative Lisa Marshall on the 14th of the month to reconfirm and touch base on everything at this point. An appropriate insurance for her home and children will be required if she does go into certification. There is no sign on the property at this time but if this request is approved the ordinance allows one unlit sign that is not over two-square feet to be on the building. Ms. ZeRuth presented a letter in support from Ms. Shirley Grasty (who was unable to attend the meeting). *The letter was submitted as Exhibit A.*

Ms. Sullivan-Beckers, Christopher Toddy, Luke Crawford, Tony Thompson, Ben Buchanan and Sue McNeary noted the following supportive comments:

- MSU calendar is followed which is helpful to the parents as most are MSU employed.
- There are fewer students than a typical daycare.
- There is a low turn-over which allows the children to bond better than a typical daycare.
- There are lesson plans every week.
- The daycare has generated no additional noise or traffic.
- The availability is ideal for the parents.
- Friendship and kindness are at the top of her curriculum.

Chairman Krieb explained that a letter of opposition was received from Ed Davis. This letter was shown to the audience through a Power Point and *submitted as Exhibit B*. The public hearing was closed and the item turned over to the board for discussion and a motion. Attorney Perlow explained that there are two distinct items to review. One is that the City allows her to operate and the other is that the State allows her to become certified. He clarified that the board is only dealing with the City's side of the matter in allowing them to operate in an R-2 zone.

Josh Vernon made a motion to approve the conditional use permit request to allow an in-home daycare for up to six children as a home occupation in an R-2 zoning district located at 1501 Chaucer Drive with findings of fact being: there are no evident traffic disruptions to the neighborhood and no evidence of disruptions to the neighborhood with regards to the regulations in the Ordinance. The property has been well maintained and kept clean and organized with the toys for the children. This approval will be contingent upon her compliance with all state and federal laws that she may be required to adhere to. Ms. ZeRuth needs to obtain a business license; have proper inspections from city officials and this permit resides with her only and will not be allowed to be transferred to anyone else. Mike Faihst seconded the motion.

Attorney Perlow asked that the following finding of fact be added to the motion: **Two adjacent neighbors were in favor of this and there were no neighbors that spoke in opposition.** The amendment was accepted. **The motion carried with a 6-0 roll call vote.**

Questions and comments: Terry Strieter was concerned about allowing businesses in R-2 zoned districts. He commented that they should be careful when making these decisions in order to keep the integrity of the neighborhoods. **A motion to adjourn was made by Jim Foster and seconded by Mike Faihst. The meeting adjourned at 5:50 p.m.**

Chairman, John Krieb

Recording Secretary, Reta Gray