

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, JUNE 19, 2019
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, June 19, 2019 at 4:30 p.m. in the council chambers of City Hall at 500 Main Street.

Board Members Present: John Krieb, Mike Faihst, Jim Foster, Paula Hulick, Carmen Garland and Josh Vernon

Board Members Absent: Bobbie Weatherly

Also Present: Maurice Thomas, Justin Smith, Jeremy Buchanan, Attorney David Perlow, Jim Osborne, Shane Knight, Marisa Stewart, Keith Miller, Karen Glover, Bill Echert and Paul Hendrix

Chairman Krieb called the meeting to order and welcomed all guests and applicants. Maurice Thomas called the roll. At this time Chairman Krieb asked if there were any changes to the minutes from the regular BZA meeting on May 22, 2019.

Mike Faihst made a motion to approve the minutes from the regular BZA meeting on May 22, 2019 as presented. Paula Hulick seconded the motion and the motion carried unanimously.

Public Hearing: A Dimensional Variance for a fence to remain in the right-of-way for the property located at 1505 Stadium View Drive – Applicant: Fern Terrace of Murray, LLC: Justin Smith explained that Fern Terrace of Murray (assisted living facility) is requesting a Dimensional Variance to allow a fence to remain in the right-of-way. The property is located at 1505 Stadium View Drive (southwest corner of Stadium View and Diuguid Drive). This request stems from the proposed sidewalk project which will replace the current sidewalks with sidewalks that are ADA complaint. The project will start at Walmart on North 12th Street and end at Diuguid Drive on the west side of Stadium View Drive. Currently Fern Terrace's fence is inside the scope of work to be done and will need to be moved and placed outside of the right-of-way. The City Ordinance states that a fence must be located 10 feet from the right-of-way line. Justin explained that Fern Terrace would like to relocate their fence 3 feet from the right-of-way line. At this time pictures were shown of the current fence placement. Justin summarized the correspondence that has previously taken place between City of Murray Project Coordinator, Marisa Stewart, and representatives of Fern Terrace. Both Warren Hopkins (City Attorney) and Ron Allbritten (City Street Department Superintendent) have advised the City against allowing the fence to be placed inside the right-of-way. The right-of-way is utilized for public utility companies to be able to service the community. Through an encroachment permit process the City grants permission to property owners to construct driveways in order to access the public street. Other utility companies have to submit encroachment permits to construct utility lines in the right-of-way when they are not the City of Murray's utility lines. Other than that, the right-of-way is designed to be a recovery area for vehicles when they run off of the road. Transportation Cabinets typically have design criteria for structures in the right-of-way to be breakaway and/or crash rated (i.e. fire hydrants,

stop signs, bollards, guard rails, and etc.). It has been the City's standing policy to not allow anything to be placed in the right-of-way that could become a hazard or potential liability.

Chairman Krieb opened the public hearing and asked the applicants to come forward.

Karen Glover and Bill Echert (representatives of Fern Terrace) came forward and were sworn in. Mr. Echert indicated that he had spoken to the Apple Tree owner (business next door) and their fence is 21 feet from the center of the road. Fern Terrace is proposing their fence be 22 feet from the center of the road (3 feet inside the right-of-way) which would be a foot farther from the center than Apple Tree's fence is. Mr. Echert stated the needs they have for the fence. He said their neighbor uses Fern Terrace's fence as a landmark when giving directions to their daycare and that Fern Terrace residents use the fence for a border. Some of the residents have dementia or Alzheimer's and they know not to walk any farther than the white fence. Mr. Echert indicated that if they were required to go back farther with the fence; that would disturb the aesthetics of the fountain which is in the center of their main entry.

Chairman Krieb asked if there was anyone that wished to speak in favor or opposition to the request. No one that came forward. The public hearing was closed and the item turned over to the Board for further discussion and a motion.

Justin explained that if a utility company should come in and decided to move the utilities on Apple Tree's property in the future, they would also be subject to moving their fence. As it is, Apple Tree is only going to lose two parking spaces because of this project. Fern Terrace's fence is right next to the side walk; therefore, their fence has to be moved. This will either require them to come into compliance with the Ordinance or they will have to be granted a variance by the Board.

Marisa Stewart was asked to come forward to explain the lighting situation. Ms. Stewart stated that she had spoken to Fern Terrace concerning the sidewalk project. The new ADA compliant sidewalk will be 5 feet wide. The current lighting would hang over the sidewalk and in order to keep someone from hitting their head on the lights, a mutual agreement was made to remove the lights all together. Ms. Stewart said that these changes will be shown on the plans by the Engineer. Chairman Krieb felt that the lights should be moved back to where the globes were actually at the edge of the sidewalk. Justin said the variance that the applicants are asking for is for the sidewalk and not the lighting and that the lighting could be addressed at another time. The attorneys have been involved with negotiations on the lighting and irrigation system and Staff is leaving those negotiations with the attorneys. Mr. Krieb indicated that he would like to see this issue of the lighting settled at this meeting so that the applicant would not have to come back for a second approval. Justin reiterated that it has not been the City's policy to allow something within the right-of-way. He explained that if a utility company should decide to run new utilities in that right-of-way that they can do it at any time. If the fence is repositioned within the right-of-way; then the fence would have to be moved again. Liability wise, it is just not a good idea. Jeremy Buchanan then explained that two prospective projects would necessitate the use and widening of Diuguid Drive; thus, the reason for trying to protect the integrity of the right-of-way at this time.

Paula Hulick made a motion to deny the variance request for the fence at 1505 Stadium View Drive to be located in the right-of-way. The testimony presented in this public hearing has shown the variance request does not meet the provisions of the Zoning Ordinance in regards to granting variances.

Chairman Krieb asked Attorney David Perlow if the motion should be changed to specify that the fence could be placed on the right-of-way line. Mr. Perlow said in order to clarify the motion that Ms. Hulick should withdraw her motion and that it should be reworded. Ms. Hulick withdrew her motion at that time. There was further discussion.

Josh Vernon made a motion to grant a zero setback variance for the fence at 1505 Stadium View Drive to be located in the front yard not as presented, but with the discussion that it would be at the setback line so that the setback and everything in the right-of-way is clear (whether it be fence or lighting) and that the applicant be allowed to go right up to the right-of-way line. This is due to the findings that there are some safety aspects associated with the occupants, the ease of access of use of the yard with the patients and also for the access of ambulances as they come and deal with the loading of occupants. Mike Faiht seconded the motion and the motion carried with a 6-0 roll call vote.

Public Hearing: A Conditional Use Permit for outdoor storage of merchandise on the property located at 710 Chestnut Street – Applicant: Jessica & Paul Hendrix: Justin explained that the applicant is seeking a Conditional Use Permit for outdoor storage of merchandise in a B-2 zone. When Mrs. Hendrix acquired the business with portable storage units on the property, she was unaware that the previous owner was non-compliant with the City Ordinance. Justin showed pictures of the property. At the time Mrs. Hendrix came to City Hall for a business license she was made aware that she would need to come to the board for approval for the portable storage units. Mrs. Hendrix would like to bring the property into compliance according to the City’s regulations which is her main reason for the request.

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

Paul Hendrix came forward and was sworn in. Mr. Hendrix stated that they are asking for permission to keep the portable buildings there. They would also like to have some cedar swings or fire pits that could be used in a backyard or a cabin setting on the property. Anything that would be placed on the property would be new or “as new” condition. They would like to move one of the higher-end buildings closer to the road so that the public can see it. They are aware of the setbacks on the property and they will comply with those. In conclusion, Mr. Hendrix said they would like to be allowed to have the outside merchandise. They also would like to let the City know that it would be done in a proper manner.

No one came forward to speak in opposition; therefore, the public hearing was closed and the item turned over to the Board for further discussion and a motion. Jeremy Buchanan noted that he had spoken with Angela Thomas that owns the property at 10th & Chestnut. She is actually concerned

more about the property next to this property and she does not have any problem with this applicant's request.

Mike Faiht made a motion to grant the Conditional Use Permit for outdoor storage of merchandise located at 710 Chestnut Street. The merchandise cannot come any closer than the 25 feet setback. The testimony presented in this public hearing has shown that granting the Conditional Use Permit for outdoor storage of merchandise in a B-2 Zone (Highway Business District) is reasonable and necessary. The Conditional Use Permit for outdoor storage of merchandise in a B-2 Zone is in compliance with the provisions of §156.081 Conditional Use Permits. Jim Foster seconded the motion and the motion carried with a 6-0 roll call vote.

Questions and Comments: Chairman Krieb asked Jeremy if anything was being done about the situation on the property next to the 710 Chestnut Street property. Jeremy replied that there are numerous issues that they are going to have to come into compliance with and those are being addressed.

Chairman Krieb called for a motion to adjourn. **Josh Vernon made a motion to adjourn at 5:17 p.m. Jim Foster seconded the motion and the motion carried unanimously.**

Chairman, John Krieb

Recording Secretary, Reta Gray