

**MURRAY BOARD OF ZONING ADJUSTMENTS  
REGULAR MEETING  
THURSDAY, SEPTEMBER 22, 2010  
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, September 22, 2010 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5<sup>th</sup> Street.

**Board Members Present:** Mary Anne Medlock, Steven Reed, Justin Pounds, John Krieb, and Tom Auer

**Board Members Absent:** Scott Seiber and Bill Whitaker

**Also Present:** Candace Dowdy, Peyton Mastera, Reta Gray, David Roberts, Warren Hopkins, Tung Dinh, Kim Oatman, Bobby Deitz, Jim Whetstone, Gerald Bell, Hawkins Teague and public audience

Chairman Pounds called the meeting to order at 4:30 p.m. and welcomed all guests and applicants. Chairman Pounds asked for approval of the minutes from the August 18, 2010 regular meeting.

**John Krieb made a motion to approve the minutes from the August 18, 2010 regular Board of Zoning Adjustments meeting as presented. Mary Anne Medlock seconded the motion and the motion carried unanimously.**

**Public hearing to review the conditional use permit application to allow a recreational facility in a B-1 zoning district – 1413 Olive Boulevard – Tung Dinh:** Peyton Mastera used a Power Point presentation to show the property at 1413 Olive Boulevard owned by Tung Dinh. This property is located in a B-1 zoning district and was formerly a fitness center/martial arts studio. Mr. Mastera stated that the applicant, Mr. Tung Dinh, is looking to renovate his existing 3600 square foot building space to a coffee bar, internet café, and entertainment center which will include games such as pool, shuffle board, etc. The purpose behind the business is to attract college students in between class time. The hours of operation will be from 7:00 am – 12:00 am. This type of business would only be allowed as a conditional use in a B-1 zoning district. In addition to the conditional use permit, Mr. Dinh will also be seeking a parking space variance from the BZA. According to the parking regulations this business is classified within a “*Place of Public Assembly, Institutions and Recreational Facilities*” which requires one parking space for every four (4) persons, based on maximum capacity, unless otherwise provided for in the ordinance. Mr. Mastera said according to this type of use and size of the building, Mr. Dinh will be required to have 43 parking spaces. He is able to provide four parking spaces on the north side of the building and three more spaces that are angled on the south side (with one of the three spaces encroaching into the access easement) which is a total of seven; thus, a variance of 36 parking spaces is requested. Mr. Dinh indicated that he has an agreement with *The Olive Restaurant* for shared parking. Mr. Mastera noted that the *The Olive Restaurant* does not meet their current parking requirements but is grandfathered-in. The surrounding parking lots are owned by Murray State University.

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

Tung Dinh, 90 Brittany Lane, Murray was sworn in. Mr. Dinh said that he would like to have a hang out place where the Murray State students could get coffee, nutrition drinks, and a light breakfast; be able to have wireless internet access and a place where they can play pool, shuffleboard and Wii. He would also like to provide music at night. Mr. Dinh stated that they would be a non-alcoholic and non-smoking facility and target primarily college students. Mr. Dinh said that he was hoping that most of his traffic would be walk up traffic where students could come between classes. Mr. Dinh added that he had an agreement with Sheer Lunacy about the cross-over easement. He said they have given him permission to use their parking spaces as long as no one blocks their driveway. Chairman Pounds asked how many employees Mr. Dinh was expecting to have. Mr. Dinh stated one manager and two to three other employees. He stated that the employees would park in the back.

Chairman Pounds asked if there was anyone that wished to speak against the application.

Kim Oatman, 615 Gilbert Graves Drive, Murray was sworn in. Mr. Oatman is Chief Facilities Officer for Murray State University. Mr. Oatman stated that the proposed use is ok with Murray State; however, they are concerned about the parking situation. He added that Murray State lots surround the entire property and that parking in that area is becoming sensitive. The lots are used extensively and parking is zoned red and blue which means it is for students as well as faculty and staff. During the day the lot will be full; however, there should be availability during the evening. Mr. Oatman stated that Murray State would be responsible for the control of what happens on the lots and that zoning enforcement will be used. Mr. Oatman said that they are continually adding night classes; thus, they can't completely give up the parking spaces.

Chairman Pounds closed the public hearing and turned it over to the board for discussion. Mary Anne Medlock stated if non-properly tagged automobiles were parked there (i.e. high school students) to visit the recreational facility, they would be subject to Murray State ticketing. John Krieb added that this could present a problem with parking availability for staff and students. Ms. Dowdy said that if this became a problem Murray State would need to contact the Planning Department. Chairman Pounds asked if there was ample sidewalk room for bicycle racks to be set up in front of the building. Mr. Mastera said that there is a very limited walkway in front of the building, but he would not object to bike racks being there. Ms. Medlock said that she thought this was a good use for the building and that she does feel that this will be a walk-up situation. Steven Reed said that he fully appreciates what Mr. Dinh is trying to provide for the college students, but he said that there was no guarantee that there would only be college students there; therefore, he was concerned with the conditional use permit being approved. He added that high school kids may be there and continue to hang out in the parking lot after midnight. He said that he was concerned that it may adversely affect the adjoining residential area with noise. Mr. Mastera said that the general public would be able to go to the entertainment center and that it would not be limited to high school and college students.

**John Krieb made a motion to approve the conditional use permit application of Tung Dinh at 1413 Olive Boulevard to operate a recreational facility with the condition there be no on-street parking and that any alteration or deviation from the submitted site plan may require further review by the Murray BZA; that there be a 36 space parking variance based upon the fact most customers will be MSU students walking to the business; and the conditional use permit be reviewed at the end of the spring semester with the university and the general public and by granting this variance it 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. Mary Anne Medlock seconded the motion and the motion carried with a 4-1 voice vote. Steven Reed voted no.**

**Public hearing to review the conditional use permit application for a planned development project – 411 South 12<sup>th</sup> Street – Huck’s:** Peyton Mastera used a Power Point presentation to show the property at 411 South 12<sup>th</sup> Street where the Huck’s facility is proposing to locate. Mr. Mastera said that in August, Huck’s received approval by both the Planning Commission and BZA at the Advisory Meeting and Compatibility Hearing, respectively. He recapped that Huck’s will be a 24 hour convenience store encompassing approximately 4050 square feet with an additional 6832 square foot canopy over 8 gas pumps. Huck’s will have a seating capacity of six (6 seats have been removed since last month) and a drive-thru window along the north side of the building. Mr. Mastera said that the distinguishing factor which requires Huck’s to go through the Planned Development approval process is that they will meet the definition of a “restaurant”. The Zoning Ordinance states in Section III, Article 6 that any restaurant within a B-4 zone must go through the PDP requirements. Mr. Mastera stated that the Planning Commission approved the preliminary PDP plat at the September 21, 2010 meeting and forwarded it on to the BZA to review the Conditional Use Permit application. Mr. Mastera stated the Planning Commissioners had some concerns about the traffic situation (which will be there no matter what business comes to that location). Mr. Mastera reviewed some of the issues noted by Planning Staff to be reviewed by both the Planning Commission and BZA through the Planned Development process:

- **Clear zone visibility.** On the site plan the developers have removed all items within the clear zone.
  - **Monument signage location.** The developers will not utilize a free-standing sign.
  - **Wall (and other) signage.** In lieu of a free-standing/monument style sign (allowed up to 55 square feet), Huck’s is requesting additional signage along the canopy as well as signage on top of each gas pump. A variance will need to be approved since they will be exceeding their allowed wall signage.
- Here is an overview of all signage being requested with a corresponding site plan entailing the location of these signs:

<i>Location of Signage</i>	<i>Dimensions of Signage</i>	<i>Approximate Square Footage</i>
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Murray Board of Zoning Adjustments Regular Meeting  
Thursday, September 22, 2010

<b>Channel letters on west side of building</b>	32" x 163 5/8"	36.4 sq. ft.
<b>Diesel LED on canopy facing west</b>	47" x 63"	20.58 sq. ft.
<b>Gas LED on canopy facing west</b>	47" x 63"	20.58 sq. ft.
<b>HUCK'S logo on canopy facing west</b>	17 3/4" x 100"	12.33 sq. ft.
<b>Diesel LED on canopy facing south</b>	47" x 63"	20.58 sq. ft.
<b>Gas LED on canopy facing south</b>	47" x 63"	20.58 sq. ft.
<b>Huck's logo on canopy facing south</b>	17 3/4" x 100"	12.33 sq. ft.
<b>8 Pump Toppers</b>	21" x 16 3/8"	2.38 sq. ft. each

Other signage not part of the variance:

<i>Type of Sign</i>	<i>Approximate Square Footage</i>
<b>Drive Thru Menu Board</b>	23.38 sq. ft.
<b>Directional Signs</b>	2 sq. ft. each
<b>Window Signage</b>	May utilize up to 25% of window area

Huck's will have channel letters along the west side of their building. This signage will be 36.4 square feet. With the Huck's being over 100 feet from South 12<sup>th</sup> Street, they are allowed by ordinance to have a 160 square foot sign. Their proposed wall sign will only be 22.75% of its allowable size. On the west side of the canopy Huck's is requesting to have three signs. Two individual LED gas price signs and "Hucks" lettering. Based upon the square footage of the west side of the canopy (122' x 4'), and given the fact this is located less than 100 feet off of South 12<sup>th</sup> Street, signage on the west side of the canopy would typically be 24.4 square feet. Each proposed LED sign will be 20.58 square feet, or 41.16 square feet combined. In addition, there will be lettering at a size of 12.33 square feet. In total, the canopy signage along the South 12<sup>th</sup> Street side will be 53.49 square feet. On the west side, the surface area signage (canopy + building wall), Huck's is allowed 184.4 square feet of wall signage. The total wall signage for this side will be only 89.89 square feet. On the south side (Sycamore Street) of the canopy they will have the exact same signage as on the west side. This side of the canopy will be 56 feet x 4 feet. Five percent of this side of the canopy would be 11.2 square feet, despite requesting 53.49 square feet; however, on the Sycamore Street side, Huck's will not have any wall signage. By ordinance they are allowed to have 40 square feet of wall signage. Mr. Mastera stated that if wall signage was looked at from strictly a surface area per side perspective (canopy + building wall), Huck's is allowed 51.2 square feet of wall signage on the south side. The total requested wall signage for this side will be 53.49 square feet. Huck's is also requesting eight "pump topper" signs over each fueling station. These signs will be 2.38 square feet in size for a total of approximately 19 square feet.

Mr. Mastera stated that Huck's has submitted a landscaping plan. Ms. Dowdy said that she had spoken to Mr. Whetstone and asked if they would be agreeable to putting up a solid eight foot fence along the east side of the property for additional screening. This could help alleviate some of the noise and lighting toward the residential area that adjoins the property. Mr. Whetstone said that he did not have a problem with that. Mr. Mastera said that Huck's has plans for an ice chest and propane tank storage facility to be located outdoors. The developers are aware that any additional outdoor storage of merchandise (even on a seasonal basis) will require approval by the BZA. Huck's will be completing the sidewalks along their property on the Sycamore Street side. Mr. Mastera said that Planning Staff configured the parking requirements based upon a split use of a restaurant and consumer service and determined that Huck's will be required to provide 28 parking spaces. They are providing 23 parking spaces; thus, they will be requesting a five parking space variance. Mr. Mastera added that the Staff does not feel this will cause a detrimental effect since Huck's will have approximately 16 additional spaces at the fueling station which is not configured as part of their requirements. Mr. Mastera said that Huck's conducted a traffic impact study prior to the PDP process and according to the study the intersection should accommodate the traffic increase. He added that it is hard to know what kind of impact there will be until the facility is actually in place. Mr. Mastera concluded that according to the developers the drive-thru will not be a 24 hour service; it will probably close at 10 or 11 pm. The drive-thru will be used for food pick up as well as convenience store needs which has proven to be a popular feature with their other stores.

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

Bobby Deitz, 645 Swift Road, Kirksey was sworn in. Mr. Deitz represented Geo Tech Engineering who did the design for the Huck's project. John Krieb asked the width of the area on the east side of the building that was being discussed for screening. Mr. Deitz stated it is 12.7 feet. Mr. Krieb asked what the setback requirement was for putting up a fence and Ms. Dowdy stated that it could be placed directly on the property line. Mr. Krieb then asked about the fuel truck delivery and if the area would be good for maneuverability.

Jim Whetstone, 1606 County Road, 1100 East, Carmi, Illinois was sworn in. Mr. Whetstone is the owner/developer for the Huck's project. Mr. Whetstone told Mr. Krieb that he did not have any radius calculations but the tanker truckers were used to tight lots and this would actually be a big lot for them. He stated that entry on 12<sup>th</sup> Street and exit on Sycamore should be a good direction for the tankers to take. Mr. Krieb asked if there was enough turning radius to come out on Sycamore and head back towards 12<sup>th</sup> Street or would they have to cross the center line when pulling back into Sycamore. Mr. Whetstone stated that goods and gasoline would both be delivered by semi-trucks and that he feels comfortable with the allowable space they will have to maneuver. Bobby Deitz stated he was accustomed to pulling trailers himself and he thought that trucks might be forced to enter and exit from the Sycamore Street entrance. Tom Auer asked what time of the day the fuel trucks usually deliver. Mr. Whetstone said there was no set time; however, they do try to avoid the busy times just as the product delivery trucks do and that they sometimes deliver at night. Ms. Dowdy stated that during the Planning Commission meeting,

the question was asked if a RV could easily get in and out of the gas pump area. Mr. Whetstone said that the layout of Huck's is pretty consistent and they are comfortable with the distance between the building and the pumps. Mary Anne Medlock said that her only concern with the project at this point is the location of where the drive-thru speaker is located on the northeast side of the building. Ms. Medlock said that if it was more north on the building away from the residential area, she thinks this would help control the noise to the surrounding homes. Mr. Whetstone said that their drive-thru traffic would be minimal compared to McDonald's. Ms. Dowdy noted that the dumpster and detention areas would each be located on the northern portion of the lot. David Roberts asked about the lighting on the building and in the parking lot. Ms. Dowdy stated that there is one residential home across the street, one directly to the east, and homes on 11<sup>th</sup> Street that adjoin this property. Ms. Dowdy said that there are no specific requirements in the ordinance regarding parking lot lighting; however, they would like to work with Huck's to make sure that Staff is comfortable with the standards set for the lighting. Ms. Dowdy stated that there had been much discussion at the Planning Commission meeting concerning the potential traffic issues at the "Y" intersection on Sycamore Street. Mr. Roberts said that this matter had been discussed at several levels and he thinks there should be some alternatives available before a building permit is issued in case it does get to be an issue. Several solutions were mentioned during the discussion. Mr. Deitz stated that after meeting with the highway department, the consensus was to add a stop sign and a stop bar to replace the yield; however, after the traffic study and more discussions, they decided to leave it like it is for now. Mr. Deitz said if it did become a problem, their first plan would be to add a stop sign and stop bar and do away with the yield.

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

**Mary Anne Medlock made a motion to approve the conditional use permit application for Huck's on the proposed development of a convenience store with a mixed-use of a restaurant at 411 S. 12<sup>th</sup> Street contingent upon final plat approval by the Murray Planning Commission and the development meeting all city regulations. Huck's may also have outdoor storage of merchandise in the form of an ice box and propane display as indicated on the site plan. Any expansion of the outdoor storage of merchandise will require approval by the BZA. This approval is also granted with the following variances:**

- **Five parking space variance as there will be up to sixteen (16) additional spaces beside the fueling stations and some patrons will utilize the drive-thru window. Any deviation from the floor plan submitted or alteration in the use of this facility is subject to review by the City of Murray.**
- **The signage as presented is approved through this conditional use permit since Huck's will not have a free-standing sign nor will they have a sign on the south side of the building. The approved signs will not hinder nor obstruct visibility:**

**Any additional signage not permitted by the Murray sign regulations will require approval by the Murray Board of Zoning Adjustments. Huck's is also asked to work with the**

**Planning Staff to develop a residential sensitive lighting scheme similar to previous projects that compliments the area; including an eight foot fence with landscaping design on the east side of the project and the owners will be willing to accept partial financial responsibility with the City to improve traffic safety within one year of opening. These variances 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. John Krieb seconded the motion and the motion carried with a 5-0 voice vote.**

**Compatibility hearing for a multi-family residential planned development project - North 13<sup>th</sup> Street – Gerald Bell:** Candace Dowdy used a Power Point presentation to show a 2.896 acre tract of land located on N. 13<sup>th</sup> Street owned by Gerald Bell with Parbel, LLC. This tract of land is located directly behind University Shops. Mr. Bell is proposing to develop two, three story apartment complex buildings. The initial site plan shows approximately 60 units with a mixture of studio, and 2 and 3 bedroom apartments with an overall total of 108 beds. There is a view of campus from every unit and there is a covered parking spot for each apartment. Mr. Bell indicated this is all subject to change and will have a more definitive layout in the near future; however, the basic concept of this development will remain as is. Ms. Dowdy stated that the property is located in a B-2 zone and residential planned projects are allowed as a conditional use. This project went before the Planning Commission on the previous night for an Advisory Meeting. The purpose of this hearing is for the board to consider whether this particular project is compatible to the area. This project exhibits many of the features Planning Staff looks for in development of a higher density residential project. It is located in close proximity to Murray State University, has access to public transportation nearby, and there is commercial activity within walking distance.

Chairman Pounds stated that the only issue that he saw was the ingress egress issue with the intersection at 12<sup>th</sup> and Chestnut Street. Ms. Medlock stated that she thought it looked like a good plan; however, she was concerned with the additional traffic that a 60 unit complex would generate to North 13<sup>th</sup> Street. David Roberts stated that when a traffic study is conducted they will tell you what type level of service that you have. Mr. Roberts said that there is additional room for right-of-way on North 13<sup>th</sup> and Arcadia to widen that area.

Gerald Bell stated that traffic is always a problem in that area and he thinks that this proposal will actually generate less traffic than putting a restaurant in at that location. Mr. Bell said that he is building traditional apartments, not student housing. Mr. Bell concluded by saying that if the board felt the project was not compatible; he did not want to proceed.

**John Krieb made a motion that the proposed residential Planned Development Project (developer Parbel, LLC) on N. 13<sup>th</sup> Street is compatible to the surrounding area. Tom Auer seconded the motion and the motion passed with a 5-0 voice vote.**

**Questions and Comments:** Mr. Mastera stated that sometime in October, there will be a continuing education. The course will be on proper conduct in meetings, rules of order, role of

Murray Board of Zoning Adjustments Regular Meeting  
Thursday, September 22, 2010

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the chairman and members and will be available to all of the board members of the city.

**Adjournment: Mary Anne Medlock made a motion to adjourn. Steven Reed seconded the motion and the motion carried with a unanimous vote. *The meeting adjourned at 6:00 p.m.***

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Chairman, Bill Whitaker

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Recording Secretary, Reta Gray