

**MURRAY BOARD OF ZONING ADJUSTMENTS  
REGULAR MEETING  
WEDNESDAY, MAY 18, 2011  
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, May 18, 2011 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5<sup>th</sup> Street.

**Board Members Present:** Brad Darnall, Justin Pounds, Mary Anne Medlock, Steven Reed, John Krieb, and Bill Whitaker

**Board Members Absent:** Scott Seiber

**Also Present:** Candace Dowdy, Peyton Mastera, David Roberts, Mike Pitman, Reta Gray, Hawkins Teague, Tung Dinh, Tammy Rogers, Marilyn Rumsey, Martin Bailey, Bill Adams, Jeff Grunst, T.C. Dinh, Matt Bartholomy, and Lance Allison

Chairman Whitaker called the meeting to order at 4:30 p.m. and welcomed all guests and applicants. He stated that the public hearing on the conditional use permit for the Planned Development Project for Dunkin Donuts was tabled at the Planning Commission meeting on the previous night; therefore, it was removed from the agenda. Chairman Whitaker asked if there were any changes, additions or deletions to the minutes from the April 20, 2011 regular meeting.

**John Krieb made a motion to accept the minutes from the April 20, 2011 Board of Zoning Adjustments regular meeting as corrected. Justin Pounds seconded the motion and the motion carried unanimously.**

**Review of Conditional Use Permit – 1413 Olive Boulevard – Tung Dinh:** Candace Dowdy used a Power Point presentation to show the property at 1413 Olive Boulevard where Tung Dinh was approved for a conditional use permit on September 22, 2010 to allow a recreational facility in a B-1 zone and was also allowed a parking variance. The parking requirements for the business were based on the maximum seating capacity which required 43 parking spaces and he could only provide seven (7) spaces. Ms. Dowdy stated that board approved his request for a 36 parking space variance. It was noted in the motion that any alteration or deviation from what was presented would have to be reviewed by the BZA. At the BZA meeting staff presented information that Mr. Dinh was looking to renovate his 3600 square foot building for a coffee shop, internet café, and entertainment center which would include games such as pool, shuffle board, etc. The purpose behind the business was to attract college students between classes. When Mr. Dinh applied for a conditional use permit he stated that his hours of operation would be from 7:00 a.m. to 12:00 a.m. During the public hearing Mr. Dinh also stated that he wanted a hang out place for Murray State students where they could play pool, shuffleboard, and Wii. He also wanted his facility to provide music at night and be a non-alcoholic and smoke free facility. Ms. Dowdy stated that even though the Conditional Use Permit was approved in September of 2010, Mr. Dinh recently opened his business (*The Night Owl*) on April 5, 2011. At that time, staff found out that a portion of the building was going to be used as a Hookah Lounge which requires specific fire retardant furniture that must meet fire codes. Dickie Walls, Fire Marshall

informed Mr. Dinh of the appropriate fire codes required for this type of use. Staff was also informed by Dickie Walls that the occupant load for the entire building was 165 persons based on the number of exits and that the area Mr. Dinh wanted to use as a dance floor would have to be reduced to 380 square feet otherwise the occupant load would be much greater and the building would have to install a sprinkler system with additional fire alarms and exits. In walking through the building prior to opening, planning staff was told by Mr. Dinh that the front portion of the building was the coffee shop and the back part of the building would serve many purposes during the day. There is an area to play pool, a study space with internet availability, a space provided for Zumba classes and an area to smoke hookah. Mr. Dinh indicated that at night the back part of the building would be for adults (18 years of age and older) and would be used for music, dancing and hookah smoking. Ms. Dowdy also said that Mr. Dinh would like to keep his business open on Friday and Saturday nights until 2:00 a.m. Planning staff suggested that he not stay open past midnight until the board reviewed this request in May. Ms. Dowdy stated that according to an advertisement in the Murray State News, Mr. Dinh's business is currently open until 2:00 a.m. on Thursday, Friday, and Saturday nights. Ms. Dowdy added that she had spoken to Kim Oatman with Murray State University and he had indicated that there had been no incidents or violations reported by Public Safety since the business has been opened. Ms. Dowdy said that she had also spoken with the owner of Sheer Lunacy next to Mr. Dinh's and she had concerns about the parking issues. She also had experienced the glass in the side entrance door to her business being shattered since Mr. Dinh's business has been opened.

Brad Darnall asked Ms. Dowdy if she had a definition for a recreational facility and Ms. Dowdy stated that there was not a specific definition. Ms. Dowdy stated that the board would have to decide if this particular business fits within a recreational facility or if it falls within the permitted or conditional use. According to the ordinance, if it falls into the category of a prohibited use, *no use shall be permitted by the BZA as a conditional use which would be detrimental to the development of other neighborhood businesses and/or residents.* She added that she contacted the MPD a few weeks ago and one of the dispatchers said that the gentleman that runs The Olive Restaurant had been into the police department and had expressed his concerns about under aged students that may be using a doorway to go from one building to the other. Ms. Dowdy spoke to Dickie Walls and he said if that was the case, the city could require an alarm to be put on the door.

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

Tung Dinh, 809 Coldwater Road, Murray was sworn in. Mr. Dinh stated that there was not a door connecting his business to The Olive. He said there is a back door that could be made to open only from the inside so that people could only get out in case of a fire and no one could be slipping in through the back way. Mr. Dinh stated that someone would be at the door to check driver's licenses or student IDs to make sure no one under age was allowed beyond the coffee shop area. He said that students come in during the morning to get a smoothie or coffee and to play pool. On the weekends, he plans to have a band and he would like to be able to stay open until 1:00 or 2:00 a.m. for the students. Chairman Whitaker asked Mr. Dinh to explain how this

business went from a coffee bar and recreational facility to a hookah smoking and dancing facility. Mr. Dinh said that they had to get something to entertain the students so they decided on the hookah smoking and dancing. He stated that his business did not serve alcohol and he thought it would be a good place for students to hang out on Friday and Saturday nights. Justin Pounds asked if he charged a cover charge and Mr. Dinh said when they have a DJ, they charge a \$5.00 cover charge. Brad Darnall asked Mr. Dinh if he knew that this type of facility was in his original plan in September. Mr. Dinh said that he is actually against smoking and he did not have that planned at the time, but in order to make his business survive he felt he had to have something that would draw the students. Mr. Darnall asked Mr. Dinh what hours he was currently open. Mr. Dinh said he is open on Friday and Saturday until about 1 or 2 a.m. John Krieb asked how he controlled the size of the dance floor. Mr. Dinh said that they card individuals at the door and when they reach 150 occupants, they don't allow anyone else in. They have to show a MSU I.D. or a driver's license that shows they are 18 years old. Chairman Whitaker said that he had never seen a bouncer in a recreational facility before and that the use of the facility had changed from the original plan and it is now more of an adult oriented business Mr. Dinh said that he has a bouncer in order to protect his business. He added that he decided to target the older students instead of the younger ones because of the problems that could exist from mixing the 16 year olds with older students. Brad Darnall asked Mr. Dinh if he thought that his current business was different from the original business plan that he submitted in September. Mr. Dinh said that he still maintains the same plan; however, from 11:00 p.m. to closing that would be different.

Chairman Whitaker asked if there was anyone that wished to speak in opposition to the application.

Tammy Rogers, 273 Pottertown Road, Murray was sworn in. Ms. Rogers, owner of Shear Lunacy, stated that parking has been a problem for some time with Mr. Dinh and Burrito Shack. Mr. Dinh has four spaces in front of his business and Ms. Rogers has all the space in the back of the building. On one occasion, one of Mr. Dinh's employees had called and had Ms. Rogers's customer's vehicle towed by mistake. She added that when Mr. Dinh was preparing to open his new business, his construction workers used her parking spaces without permission. Ms. Rogers stated that there had been no agreement to share parking with Mr. Dinh; however, she would be willing to rent parking spaces to him. Ms. Rogers also owns the apartment at the rear of the building and according to her tenants the loud music starts at 7:00 a.m. and continues until late at night since Mr. Dinh's business has been opened. Ms. Rogers said there had been a trailer with trash sitting at the site for approximately four to five months and that there is frequently trash lying around in the parking lot in the mornings. Ms. Rogers concluded that her side door to Shear Lunacy was broken one evening between the hours of 12:00 and 2:00 a.m.

Chairman Whitaker asked if there was any one that wished to rebut.

Mr. Dinh came forward and said that the automobile being towed had been a mistake and he was sorry that it had happened. Mr. Dinh paid the tow truck bill because one of his employees thought the automobile belonged to a college student. Mr. Dinh said that he has owned his

building for 20 years and he was aware of where Ms. Rogers' parking spaces were and that he had not given Burrito Shack permission to park in Ms. Rogers's spaces. Mr. Dinh added that he has his bouncer pick up the trash that might be scattered around the parking area each night because he knows if the parking lot is dirty the next morning, the neighbors will point the finger at him. Mr. Dinh concluded that they do not blast their music at 7:00 a.m. because it is a coffee shop where people just like to come in for their morning coffee and muffin or smoothie.

Chairman Whitaker closed the public hearing and turned it over to the board for discussion.

Mary Anne Medlock asked Mike Pitman if there was anything in the ordinance about recreational facility. Mr. Pitman stated that there was not. He said that he looked over the permitted uses and stated that a close provision was a coffee shop with a fountain shop. Mr. Pitman stated that in the conditional use permit review process, the board can approve, modify, or deny the application and they also have the right to review the application periodically and determine if they are in or out of compliance. Justin Pounds asked Mr. Mastera what type of letter was originally sent to the adjacent property owners before the BZA meeting when the applicant requested a conditional use permit. Mr. Mastera said that it was a general letter stating something to the affect of: *Mr. Dinh is applying for a conditional use permit to operate a recreational facility in a B-1 zone and you are openly invited to attend the meeting.* Mr. Pounds asked if there was any specific information as to what Mr. Dinh's business would be. Mr. Mastera stated only that it was a recreational facility. He added that Murray State, Ms. Rogers and Mr. Dinh were the only adjacent property owners; therefore, they were the only ones that were sent letters. Ms. Dowdy said that the original Conditional Use Permit application was for Mr. Dinh to open a coffee shop, internet café and activity center. Ms. Medlock stated that there are some things within the business plan that were altered from the original request such as the hours and the type of activities and she also noted that the lack of exits in the back would change safety issues. Brad Darnall said that he looks at this application as being altered or deviated from the original plan. Steven Reed stated that he voted against the original proposal in September and that now it is basically a non-alcoholic night club operating there. Mr. Reed said that his concern is about the noise level and the proximity to a residential area and the fact that they are requesting to stay open to 2 a.m. Mr. Pounds stated that he could see by extending the hours of operation by two additional hours could present a problem with the music. He added that he did not think there were any restrictions as to how late a business could be opened, just an ordinance that alcoholic beverages must be removed from the customer before midnight. Mr. Pounds said that he would be willing to review this again in six months provided the hours remained the same as originally proposed and closing time would be 12 a.m. He added that Mr. Dinh's business had only been open a month and in order to see if this disrupts the neighborhood, he thinks that they should allow him more time to prove himself. Ms. Medlock said that she thinks the conditional use permit should be revoked and Mr. Dinh should come back with a better permit that better matches the use of the facility. She added that even after his discussion with staff and they advised him to go back to the midnight hour, Mr. Dinh didn't. Ms. Medlock said there was clear evidence that the intended use had been altered and changed and that giving Mr. Dinh six more months would not make any difference. Mr. Krieb said if that approach was taken, he felt that they would be basically shutting Mr. Dinh's business down and he did not know if that was in

the board's prerogative to do that. Mike Pitman said that the board has the right to shut the business down or ask them to bring it into compliance if they find that the conditional use permit has been violated. Mr. Roberts said that he was not aware of any complaints from the police department since Mr. Dinh's business has been opened and that he would like to make a recommendation that the board consider giving Mr. Dinh another six months and then at that time review the application to see if it has been brought into compliance. Mr. Roberts stated that hopefully Mr. Dinh would try to make a greater effort as he has publically stated that he is trying to do.

**Justin Pounds made a motion that the original conditional use permit remain as is, with the notation that it is reviewed by the BZA again in six months and that strict compliance is adhered with the use that was outlined in the original application in the public hearing. John Krieb seconded the motion and the motion carried with a 5-1 voice vote. Chairman Bill Whitaker voted no.**

**Public hearing to review Dimensional Variance Application for site variance at 411 South 12<sup>th</sup> Street – Huck's:** Peyton Mastera used a Power Point presentation to show the Huck's store located at 411 South 12<sup>th</sup> Street. Huck's is a new convenience store that went through the Planned Development Process recently. At that time the Murray Board of Zoning Adjustments granted a signage variance. Below describes what their approved request entailed:

- **Wall (and other) signage.** *In lieu of a free-standing/monument style sign (allowed up to 55 sq. ft.), 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.*

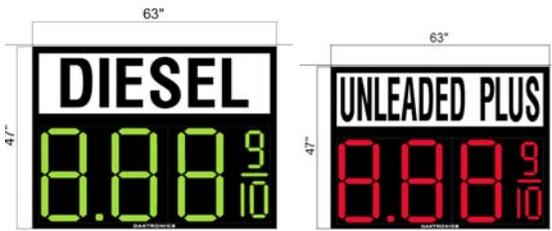
*Huck's will have channel letters along the west side of their building. This signage will be 36.4 square feet. With the Huck's being over 100 feet from S. 12<sup>th</sup> Street, they are allowed by ordinance to have a 160 sq. ft. sign. Their proposed wall sign will only be 22.75% of its allowable size (difference of 123.6 sq. ft.).*



*On the west side of the canopy Huck's is requesting to have three signs. Two individual LED gas price signs and lettering that says "Hucks". 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 ft. off of S. 12<sup>th</sup> Street, signage on the west side of the canopy would typically be 24.4 sq. ft. Each proposed LED sign will be 20.58 sq. ft., or 41.16 sq. ft. combined. In addition, there will be lettering at a size of 12.33 sq. ft. In total, the canopy signage along the S. 12<sup>th</sup> Street side will be 53.49 sq. ft. If you*

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look at wall signage from strictly a surface area per side perspective (canopy + building wall), Huck's is allowed 184.4 sq. ft. of wall signage on the west side. The total wall signage for this side will be 89.89 sq. ft.



On the south side (Sycamore Street) of the canopy they will have the exact same signage as will be on the west side. This side of the canopy will be 56' x 4'. 5% of this side of the canopy would be only 11.2 sq. ft., despite requesting 53.49 sq. ft. However, on the Sycamore Street side, Huck's will not have any wall signage. By ordinance they are allowed to have 40 sq. ft. of wall signage. If you look at wall signage from strictly a surface area per side perspective (canopy + building wall), Huck's is allowed 51.2 sq. ft. of wall signage on the south side. The total requested wall signage for this side will be 53.49 sq. ft.

Huck's is also requesting eight "pump topper" signs over each fueling station. These signs will be 2.38 sq. ft. in size for a total of approximately 19 sq. ft.



Here is an overview of all signage being requested with a corresponding site plan entailing the location of these signs:

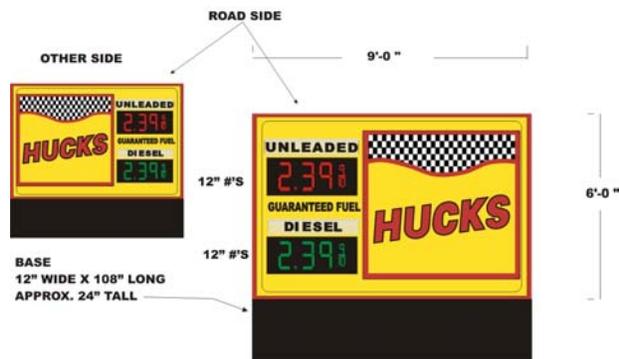
Location of Signage	Dimensions of Signage	Approximate Square Footage
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<i>Channel letters on west side of building</i>	<i>32" x 163 5/8"</i>	<i>36.4 sq. ft.</i>
<i>Diesel LED on canopy facing west</i>	<i>47" x 63"</i>	<i>20.58 sq. ft.</i>
<i>Gas LED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

Other signage not part of the variance:

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

Mr. Mastera stated all signage is in place and Huck's received a permit for these signs. Mr. Mastera said that Marilyn Rumsey with Custom Signs recently contacted him about placing a monument style sign on the property. Mr. Mastera said that he explained that Huck's signage variance currently prohibits them from having a monument style sign because they had requested additional signage in lieu of one in September 2010 and that the only way it could be approved is through another Dimensional Variance granted by the BZA. Mr. Mastera stated that the proposed monument style sign will be located on the north end of the property and be situated so that it will be visible to southbound traffic under the existing Murray Bank free-standing sign. It will meet all size and setback requirements typical of a monument style sign. The sign will be eight feet from ground level with the sign itself only being 54 square feet in size. (The Murray Bank sign received a sign permit 11 years ago but it did not receive a front setback variance despite being less than ten feet off the front property line.)



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

Marilyn Rumsey, 7540 St. Jordan's Circle, Newburg, Indiana was sworn in. Ms. Rumsey represents Custom Signs & Engineering in Newburg and they are the sign installer and manufacturers for Huck's. Ms. Rumsey stated at the time that the station was originally built, they felt that the signs they had requested would be adequate for this location; however, since opening they see the need for an additional sign on the north side of the building. Ms. Rumsey said that the LED sign that is parallel with 12<sup>th</sup> Street is not readable until you are right upon it. Ms. Rumsey showed additional pictures of Huck's and the signs that are currently displayed. *(The pictures were entered as Exhibit A.)* Ms. Rumsey said that their business is based on competitive gas prices and they are required by law to post them. She pointed out that that you could not see what the gas prices are while you are driving down the street until you are almost upon them. Ms. Rumsey said that the name Huck's is only 17 inches tall on the canopy; therefore, they believe that it would be beneficial to have a sign that was more visible for 12<sup>th</sup> Street traffic. Mr. Krieb stated that he thought that anyone that lived in Murray or Calloway County was aware of the new Huck's location and the brightness of the building. He said that he thought they would have their regular customers as Kroger and Walmart do and he did not think another sign would be beneficial. Mr. Pounds asked how this was overlooked in the initial phase of construction. Ms. Rumsey stated that most Huck's stations have a pole sign and that they actually did look at putting one on the property but they were told that it had to be 400 feet back from the intersection and that put the pole in the middle of the lot. At that time they decided it would not be feasible so they optioned with the other way. Ms. Rumsey said that right now they are not comfortable with their signage and they really would like to have a monument sign. Mr. Pounds asked Planning Staff what the setback was and Ms. Dowdy stated it is 10 feet. Ms. Rumsey said that she came up with the 400 feet from an e-mail. Mr. Darnall asked if they had considered another LED sign on the north side of the building and Ms. Rumsey said that it had been considered, but with the location of the Murray Bank sign, you would have to be able to catch it just at the right angle in order to see it. Chairman Whitaker asked if Huck's was going to take down all their ineffective signs. Ms. Rumsey said that they hadn't planned on removing any

signs; they just wanted to add an additional one. Ms. Medlock said that she liked that the company came in and gave the board a distinctive list of the signs that they would need which allowed them to put a statement in the conditional use that there would not be a monument sign. She thought that was forward thinking and appreciated it very much. Ms. Medlock added that she was a little disappointed that they were coming back for approval of a monument sign. Ms. Medlock said that she did not think that the proposed location beneath the Murray Bank sign would be a good use for that space and the Huck's sign would detract from the Murray Bank sign. Ms. Rumsey concluded that the proposed sign would be compliant with the sign regulations and would benefit their business.

Martin Bailey, 1375 County Road 700, Carmi, Illinois was sworn in. Mr. Bailey is the chairman that represents Huck's. Mr. Bailey said that the store is doing very well and they appreciate the City of Murray and the customers. Mr. Bailey stated that they thought they had the Murray store covered with the LED signage; however, it was very hard to determine exactly what they needed before the canopy went up. He stated that people shop price and when you are going south on 12<sup>th</sup> Street, it is difficult to see the prices of their gas. Mr. Bailey added that they do not normally put up monument signs at Huck's locations; however, they are requesting this particular monument sign for their customer's convenience. Mr. Bailey concluded by saying that they had no intention of deceiving anyone when they initially made the decision not to have a monument sign; once the store was finished that decided that there was not adequate coverage. Mr. Bailey said that they would consider giving up one of the signs on the canopies if the board would allow them to have a monument sign.

Chairman Whitaker asked if there was anyone that wished to speak in opposition to the application. There was no one. Chairman Whitaker closed the public hearing and opened up for board discussion.

Mr. Krieb said that the Huck's facility was a very nice looking facility and that maybe a LED sign on the north end of the building would be more viable than the one on 12th Street. Mary Anne Medlock stated that the conditional use permit stated that there would not be a monument sign. Brad Darnall added that the main traffic is going north and south and he thought that the LED facing west would be needed less than one facing north or south. Ms. Dowdy said there should not be a problem with them moving the west facing LED sign to the north end of the building.

**Mary Anne Medlock made a motion to deny the Dimensional Variance Application of Huck's at 411 South 12<sup>th</sup> Street to use a monument-style sign in addition to their previously granted signage variance based on the findings that according to the conditional use permit the company had initially brought a list of requested signage and agreed that they would not need a monument style/free standing sign. John Krieb seconded the motion and the motion carried with a 6-0 voice vote.**

**Public hearing to review Dimensional Variance Application for sign variance and screening requirements at South 12<sup>th</sup> Street – Domino's: Justin Pounds recused himself from this**

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*matter.* Peyton Mastera used a Power Point presentation to show the property at the intersection of 12<sup>th</sup> & Poplar Streets where Domino's Pizza is proposing to construct a new facility across the street from where they are presently located at 117 South 12<sup>th</sup> Street. The property is located in a B-2 zone (Highway Business District). Mr. Mastera clarified that there would be three store fronts at the location. Domino's Pizza will occupy the north side of the building. Another restaurant is proposed to go on the south side and retail is proposed for the center. Each restaurant will be a drive-thru facility. Mr. Mastera stated that Bill Adams would be representing Domino's. They have submitted the following Dimensional Variance requests for signage in addition to waiving the screening requirements between Domino's and the residential zoning district adjacent to it.

1. Clear Zone. The site plan shows this sign will protrude four feet into the 50 foot clear zone. Planning Staff does not foresee any visibility issues with this sign being in the clear zone as it is presented on this site plan.
2. Additional wall sign of 27.5 square feet on the northeast corner of Domino's Pizza. This development will be three separate units with Domino's occupying the North unit. The far south unit will be allowed an additional wall sign facing Poplar Street since it is on the corner and that requested square footage is 27.5.



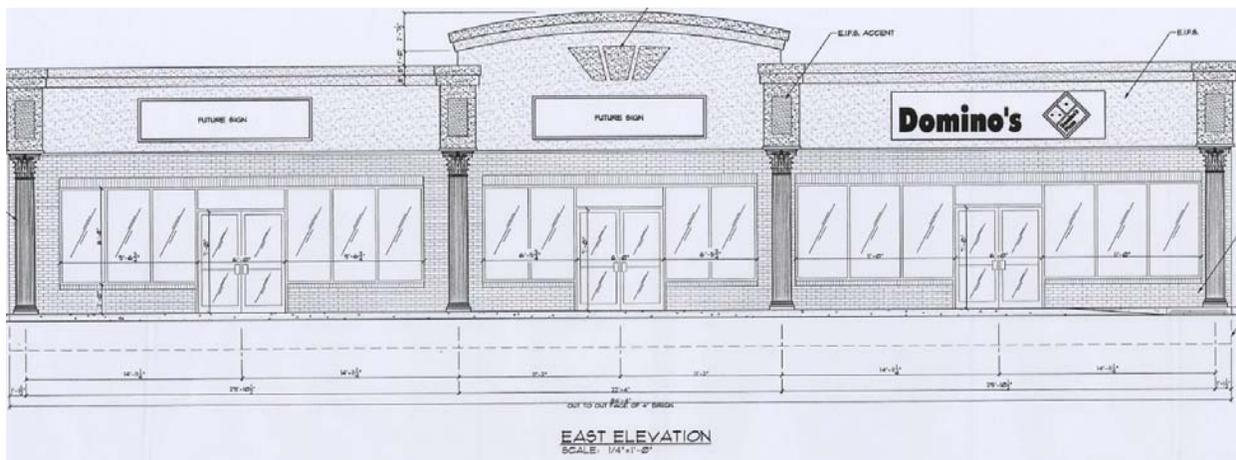
(Variance is for this proposed wall sign.)



(This wall sign is allowed under the zoning ordinance.)

(This wall sign is allowed under the zoning ordinance.)

3. Wall signage variance on South 12<sup>th</sup> Street side. Each unit the applicant is requesting for the signage to be larger than what is allowed. Wall signage is calculated by calculating 5% of the square footage of the face of each of these store fronts.

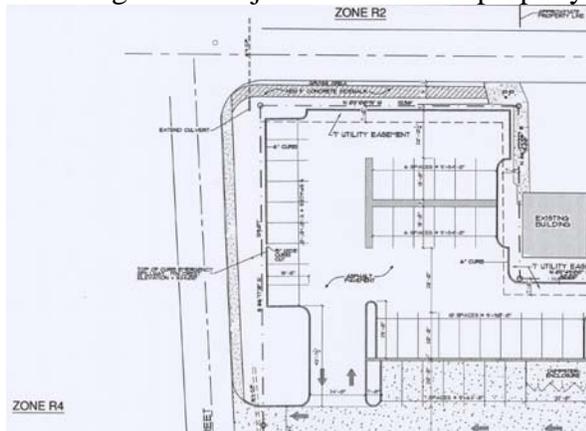


In looking left to right, the first storefront is allowed 26.3 square feet, the second 23 square feet, and the third (Domino's) is allowed 26.3 square feet. The applicant is requesting the storefronts be allowed, 36 square feet, 36 square feet, and 47.6 square feet, respectively.

4. Request for larger monument style sign. Upon review the applicant will not need a size variance on the sign. According to the frontage of the lot, the allowed square footage of a monument sign is 80 square feet and the applicant is requesting a 64 square foot sign.

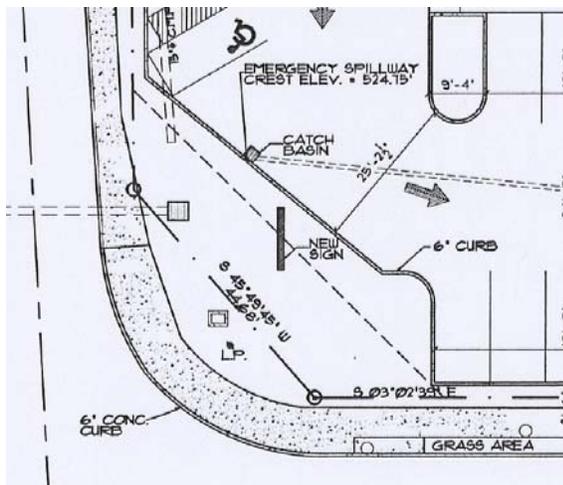
5. Monument sign height variance. Ordinance requires monument styles signs to be no taller than 10 feet. Applicant will be meeting this requirement.

6. Waiving of screening requirements. The applicants are also looking to waive the screening requirements along the southern and western property lines. According to Section III, Article 3.D.2 of the Zoning Ordinance, *"whenever a front or side yard is across the street from any property located in a residential zone, there shall be provided adjacent thereto a landscaped yard ten feet in depth for a distance equal to the residential zoning lot line along the street."* According to the site plan the applicants will not have ample room to provide the necessary screening on the adjacent residential property.



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Chairman Whitaker asked if there were sidewalks proposed. Mr. Mastera stated that there is currently a sidewalk along the Poplar Street side that the City installed a few years ago and the proposal has sidewalks included in the site plan.

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

Bill Adams, Bill Adams Construction, 1506 Hermitage Place, Murray was sworn in. Mr. Adams stated that he was representing Amhad Razban, who is the owner of Razban Properties and the Murray Domino's. Mr. Razban has purchased 1.040 acres on the corner of 12<sup>th</sup> and Poplar that extends to 13<sup>th</sup> and Poplar. Mr. Adams stated that there are 62 parking spaces available including a handicap space and there are 59 required. He said that was based upon 21 for each restaurant, 4 for each restaurant's employees and 9 for the retail store. Mr. Adams stated that at this point they do not know what the restaurant on the south side of the building will be; however, the Domino's side of the building will be the largest of the three. Mr. Adams said that there will be two entrances to the facilities, one on 12<sup>th</sup> Street and one on Poplar. Mr. Adams explained the proposed location of the monument sign. He said that there is plenty of room at the intersection where the monument sign will not interfere with visibility. Mr. Adams added that Mr. Razban does not know if he will want a reader board or not; however, Mr. Adams said that he understands the ordinance and he has explained it to Mr. Razban. In reference to the sign variances for the building Mr. Adams stated that the sign on the south side of the building is allowed and he is asking for a sign to identify Domino's on the north side of the building because it is located approximately 70 feet from the property line and not visible when you are driving down 12<sup>th</sup> Street until you are right upon it. Mr. Adams said that on the front of the building the sign that he is requesting for Domino's is slightly larger than the other two front signs and according to Domino's signage, it is actually one of their smaller signs. In regards to screening, Mr. Adams said that he proposing that the screening on the south and east side of the lot be waived. Mr. Adams stated that he has maximized the use of the land with parking, green space,

a retaining wall, sidewalks and building; therefore, there will not be a lot of room for screening. In addition, both the southern and western sides of the property are bordered by R-2 and R-4 zoned areas. With the elevation of the land, the dumpster area will be hidden from the adjoining property owners. Mr. Adams said that there would not be a building next to the property lines, there would be parking and green spaces and that if screening was put up, it would affect the clear zone.

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

**John Krieb made a motion to approve the Dimensional Variance Application of Domino's at the proposed development at 12<sup>th</sup> and Poplar for the requested waving of the screening requirements on the western and southern property lines, the protrusion of the monument sign into the clear zone, and the parking spaces being within the clear zone on the southwest corner of the property. 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. Brad Darnall seconded the motion and the motion carried with a 4-1 voice vote. Mary Anne Medlock voted no.**

**John Krieb made a motion to approve the wall signage as shown. No one seconded the motion.**

**Steven Reed made a motion to deny the request for the Dimensional Variance Application of Dominos at the proposed development at 12<sup>th</sup> and Poplar for the requested signage variance. Mr. Reed made motion to approve a wall signage variance for the proposed Domino's wall signage on the front of the store (north end of the building) may be 27.5 square feet. 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. Mary Anne Medlock seconded the motion and the motion carried with a 3-2 voice vote. John Krieb and Chairman Whitaker voted no. Justin Pounds re-entered the meeting at 7:25 p.m.**

**Review of conditions placed on Dimensional Variance at 1407 Main Street – Vietnamese Cuisine – T.C. Dinh:** Ms. Dowdy used a Power Point presentation to show the property at 1407 Main where the BZA granted T.C. Dinh a parking variance on June 16, 2010. When the request was approved the motion stated that the new gravel parking lot was to be installed in the rear of the property within 60 days of the purchase of the property. Ms. Dowdy stated that Mr. Dinh had completed that. The motion also stated that the parking lot had to be paved within one year from purchase date. Mr. Dinh is requesting that the board grant him an extension on the paving of the lot due to economic hardship. Ms. Dowdy said that the restaurant had not taken off as well as he was expecting and the need for the additional parking is not there since the college is

out for the summer. If the board is inclined to grant this extension until October 31, 2011 this would still allow him sufficient time to complete the paving of the lot prior to the asphalt plant closing for the season.

**Mary Anne Medlock made a motion to grant the extension to pave the graveled parking lot at 1407 Main Street as specified at the June 16, 2010 BZA meeting until October 31, 2011. John Krieb seconded the motion. The motion carried with a 6-0 voice vote.**

**Public hearing to review Dimensional Variance Application for additional parking space variance at 1407 Main Street – Vietnamese Cuisine – T.C. Dinh:** Ms. Dowdy reviewed this item simultaneously with the Dimensional Variance conditions that were placed on Mr. Dinh's Vietnamese Cuisine restaurant. On June 16, 2010 the BZA reviewed an application by Mr. Dinh to grant a parking variance at 1407 Main Street. Mr. Dinh was required to have 66 parking spaces based on the mixed use of the property as residential, retail and a restaurant. With the purchase of the property behind 1407 Main Street, Mr. Dinh was able to provide 60 spaces per his site plan. The board approved a six (6) parking space variance based on the above use of the property and stated in the motion that the variance was for this use only and any change in the use or expansion or enlargement of the use would require additional review by the board. Ms. Dowdy stated that Mr. Dinh has reduced the square footage of the retail tenant space on the east side of the building and by doing that he would like to add that additional 900 square feet to his restaurant. This would increase his parking requirements by nine (9) spaces. He is asking the board to consider granting an additional variance on the parking requirements for a total of fifteen parking spaces. This would be an overall reduction in Mr. Dinh's meeting his parking requirements by 20%. Ms. Dowdy said that Mr. Dinh has discussed this with his adjoining property owners and they have no objections to his request.

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

Jeff Grunst, 605 Pine Street, Murray was sworn in. Mr. Grunst was speaking on behalf of Mr. Dinh. Mr. Grunst stated that Mr. Dinh's business has started off slow and he has a lot of money tied up in the initial renovations; therefore, he is asking for additional time to complete the paving of the back parking lot. Mr. Grunst said that in order to rent the building, he had to cut the square footage on the tenant's side by constructing a wall. In doing so he basically now has a boxed in area in the middle of the building with 900 square feet that is just sitting there with no access. Mr. Dinh would like to incorporate that area into his restaurant. He wants to put pool tables, arcade games and maybe dart boards in that area just to utilize the space. Mr. Grunst said that he is going to put one doorway into the area so that there will be access from the restaurant only. He added that there will be no seating in the area and it will be for Mr. Dinh's customer's use only. Mr. Grunst said that there is a Hookah Lounge in the east side of the building and their hours are from 3 p.m. until 1:00 a.m.; therefore, there are no morning or lunch flow problems.

Matt Bartholomy, 318 Squire Road, Murray was sworn in. Mr. Bartholomy stated that he owns the building where his business (Main Street Pizza/Matt B's) and Zax's is located. He said that

he has owned Matt B's for fourteen years and has had a lot of neighbors during that time and they have always tried to work together. Mr. Bartholomy said that he wouldn't have been able to get opened if it was not for his neighbors; therefore, he feels obligated to speak for Mr. Dinh. He said that they had tried to keep the parking separate, but he sees more of his customers during the noon hours parking in Mr. Dinh's spaces than Mr. Dinh's customers parking against Mr. Bartholomy's wall. He feels that he has somewhat taken Mr. Dinh's spaces and Mr. Dinh has been nice enough not to make a big deal about it. Mr. Bartholomy stated that if anyone parks out of place it is good for everyone because that means more business. Mr. Bartholomy added that he closes at 8:00 p.m. and the businesses in Mr. Dinh's building seem to be geared for the later hours. Mr. Bartholomy said that there has not been a time where there was no parking available. There have not been fender benders reported and the current situation has worked out pretty well. He concluded that there is more availability now than when it was Owens's and parking was tighter.

Lance Allison, 2213 Quail Creek Drive, Murray was sworn in. Mr. Allison is the Director of Murray Chamber of Commerce and he said that Mr. T. C. Dinh is a member and they are very glad to have him. Mr. Allison stated that Mr. Dinh has spent a considerable amount of time, money and resources on this project in a time where people aren't investing because of the economy. He has taken something that has been vacant for a long time and turned it into something usable and is visually good to look at. Mr. Allison said that Mr. Dinh probably doesn't need the parking that he has now in addition to the lot in the back. Because of the investment that Mr. Dinh has made and trying to get a new business off the ground, Mr. Allison stated that he would like to encourage the board to grant the variance to allow Mr. Dinh extra time to complete the parking lot. Mr. Allison added that adding a pool table and recreations will be an enhancement to the establishment and a logical way for Mr. Dinh to make good use of space.

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

**Mary Anne Medlock made a motion to amend the Dimensional Variance application of T.C. Dinh at 1407 Main Street to allow an additional 9 parking space variance with the same findings of fact and conditions set forth at the June 16, 2010 BZA meeting. John Krieb seconded the motion and the motion carried with a 6-0 voice vote.**

**Questions and Comments:** Brad Darnall said that what has gone up at the Murray Auto Spa does not seem to be what was approved at the March meeting.

**Adjournment:** Justin Pounds made a motion to adjourn. Brad Darnall seconded the motion and the motion carried with a unanimous vote. *The meeting adjourned at 7:55p.m.*