

**MURRAY BOARD OF ZONING ADJUSTMENTS  
SPECIAL MEETING  
TUESDAY, NOVEMBER 27, 2012  
4:30 P.M.**

The Murray Board of Zoning Adjustments met in special session on Tuesday, November 27, 2012 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, Scott Seiber, Mary Anne Medlock, Josh Vernon

**Board Members Absent:** Justin Pounds and Brad Darnall

**Also Present:** Candace Dowdy, Justin Crice, David Roberts, Reta Gray, Hawkins Teague, Keith Boeller, Jeff Mauer, Bobby Deitz, Burton Young and public audience

Chairman Krieb called the meeting to order and welcomed all guests and applicants.

**Public Hearing: Dimensional Variance request to place an accessory structure in a side yard with a front yard setback variance – 106 South 12<sup>th</sup> Street – PAJCO, Inc.:** Candace Dowdy used a Power Point presentation to show the property at 106 South 12<sup>th</sup> Street that is currently owned by CIK Capital, LLC. Applicant Keith Boeller with PAJCO, Inc. is proposing to purchase the property and construct a convenience store on the site. The store will be a Rhodes Convenience Store and will also sell gasoline. The property is located in a B-2 (Highway Commercial) zoning district with a convenience store being allowed as a permitted use. This property has road frontage on 12<sup>th</sup> Street and 13<sup>th</sup> Street and the primary entrances will be on 12<sup>th</sup> Street. The state will have to approve any changes that are made to the existing entrances on 12<sup>th</sup> Street. The site plan shows the convenience store to be located on the south end of the property with a canopy over the gas pumps on the north side. Planning Staff has informed the applicant that the covered canopy will be accessory to the convenience store and that the placement of this structure in the side yard will require a dimensional variance. Because of the unique shape of the lot and the topography of the land the canopy is being shown 36 feet off the front property line; thus requiring a 14 foot front yard setback. The principal structure will be 64 feet off the front property line. Scott Seiber asked if there was a reason that the canopy is shown positioned over the setback allowance. He also wanted to know if there would be a drive all the way around the primary structure. Ms. Dowdy said that a representative was there that could address those questions. Chairman Krieb asked if the Grease Monkey to the north met the 50 foot setback. Ms. Dowdy replied that she thought it did because she could not find a request for a variance in the files. She added that the new Domino's building also met the 50 foot setback. Josh Vernon asked if Huck's required a setback variance for their canopies. Ms. Dowdy replied that Huck's was a different situation because they were located in a B-4 zoning district and in a B-4 zone the front setback is 35 feet. She added that since Godfather's Pizza was located within the Huck's store, they looked at it as a restaurant; therefore, they went through a Planned Development Project process. Mary Anne Medlock asked what type of signage they would be requesting and if there would be screening required around the establishment. Ms. Dowdy stated that this was just a preliminary meeting for the interested parties to see if they would be allowed a setback variance before they actually purchase the property; thus, they have not seen any proposed signage at this point. She added that the entire block from Main to Poplar back to 13<sup>th</sup> Street is in the B-2 zoning district. Dr. Burton Young has a dental office and an apartment building that adjoins the property as well as Room To Grow Daycare. She said that there would probably be a retaining wall behind the convenience store because of the variations of elevations. Ms. Dowdy said that screening is something that can be addressed as the project moves forward.

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

Keith Boeller, 1533 Brunston, Cape Girardeau, Missouri was sworn in. Mr. Boeller thanked the board for allowing the special called meeting. He said that they think that Murray is an awesome community and with the recent liquor license changes, they thought this would be a good place for them to open a convenience store. They are respected in the communities they are in and feel that they would love to be a part of this community. Mr. Boeller introduced Jeff Mauer who is one of the owners and board members. Mr. Boeller stated that in positioning the canopy on the lot, they had to make sure they had enough room for traffic to go around the building, access the drive-thru and be able to exit off 12<sup>th</sup> Street. The infrastructure for the gas tanks will be either on the side or back of the building and they will have to be located where tankers can get in to deliver gas. By moving the canopy up to a 35 foot setback this will allow them more room for tanker trucks and other vehicles to maneuver. The further back the canopy moves creates an issue around the southwest corner because of the shape of the lot. Mr. Boeller stated that they love the location of the lot; however, the size and shape present some difficulties in laying out the project. They have some stores that have the canopy in the front, but they have chosen a model for this store to have the canopy on the side. (Mr. Boeller presented pictures of a model that the proposed Murray store would look like.) Mr. Boeller stated that the front of the building would be facing 12<sup>th</sup> Street and that in positioning the building on the site they made sure that they had enough room around the canopy to access off 13<sup>th</sup> Street and the two entrances off 12<sup>th</sup> Street as well as maneuver traffic around the building. Mr. Boeller stated that there would only be an entrance on the front side of the building and that visibility is important to them. They have cameras to focus on the safety of their customers and that actually played another part in the location of the canopy since the only entrance to the building is facing 12<sup>th</sup> Street. The guests feel safer if someone inside the store can see them at night. Mr. Boeller stated that the LED lighting will illuminate downward instead of protrude into the neighborhood. Josh Vernon said that the property line to the north is approximately 20 feet away from the pumps and he wondered if Mr. Boeller could foresee any problems with the people at the pumps running over that property line when exiting the gas pumps. Mr. Boeller said that the area will be curbed and with the angled gas dispensers, they do not feel like they will have any problems. There is currently a drainage ditch that runs along the center of the property that will need to be relocated.

Bobby Deitz, 645 Swift Road, Kirksey, Kentucky was sworn in. Mr. Deitz is the engineer for the project. Mr. Deitz explained that they would be constructing a box culvert that would connect to the junction box that runs to the west of South 12<sup>th</sup> Street. Mr. Deitz also explained that they would be constructing a retaining wall along the southwestern part of the lot which will be 4-5 feet from the property line. He stated that he does not envision the wall being nearly as tall as the one to the south at Domino's. With the retaining wall not being located on the property line, this is also a factor for the canopy being positioned where it is. Chairman Krieb asked if there would be a retaining wall along the northern side of the property. Mr. Deitz said that there would be a curb; however, since they have not gotten into the grading plan for the property yet, they are not sure if a smaller retaining wall will be necessary. Mr. Deitz stated that they have previously met with the state concerning the widening of the entrances and they are waiting approval to widen the 12<sup>th</sup> Street entrances to either one 50 foot entrance or two 30 foot entrances. Chairman Krieb asked where the traffic would be expected to exit. Mr. Deitz said he would suspect they would use 13<sup>th</sup> Street. Mr. Deitz said that with the odd shape of the lot that there will actually be a pretty good traffic flow around the canopy. David Roberts asked about the routing of the tanker trucks. Mr. Boeller said that could possibly depend on the re-routing of the water and the exact locations of the underground storage tanks. He said both 12<sup>th</sup> and 13<sup>th</sup> streets could be possibilities. Mr. Roberts stated that 13<sup>th</sup> Street is not overly wide (20-22 feet) and he could see potential problems with a tanker truck on that street. He added that if a tanker truck left the business via 13<sup>th</sup> Street and traveled north, there would be another problem when attempting to get out in traffic on Main Street. Mr. Roberts stated that

stormwater detention would be required and asked Mr. Deitz if they had considered where it would go. Mr. Deitz answered that they would try to detain as much as they can on the surface and in the parking area; however, he anticipated some would be underground since the green space would be located on the higher side of the property. Josh Vernon asked if there was a model that they had used before that had less pumps and a shorter canopy. Mr. Boeller answered that their design has been to have "dive-in" type dispensers because they feel like the customers can access that easiest. He added that they think five dispensers is the best fit for them, but they would be open to discussion on cutting back to four dispensers.

Chairman Krieb asked if there was anyone that wished to speak in opposition to the variance.

Burton Young, 111 South 13<sup>th</sup> (business address), Murray KY was sworn in. Dr. Young stated that he is not necessarily in opposition to the variance; however, he does have some concerns. He said when he received notice of this meeting he was surprised that there was something such as this proposal going in that location. He referred back to the construction of the recently constructed Domino's. He said that by looking at the Domino's building, it is fairly close to 12<sup>th</sup> Street and the proposed main building for this project will be even closer to 12<sup>th</sup> Street. He stated that there would be very little parking on the east side especially if there is going to be a drive-thru. Dr. Young is also not in favor of the canopy being that close to the street and said that it will ruin the beauty of the street. The entrance on 13<sup>th</sup> Street is a main concern. Dr. Young recalled that when the daycare on 13<sup>th</sup> Street was looking at enlarging, the increased traffic was an issue. Now they are proposing to put in an entirely different business with tanker trucks and possibly additional traffic routing to 13<sup>th</sup> Street. Dr. Young said that 13<sup>th</sup> and Main is a very dangerous intersection. It is hard to see to the west because of the vehicles parked at Victor's and almost impossible to pull out with the intersection being so close to 12<sup>th</sup> and Main. The entrances to Walgreen's and Rite-Aid add to the congestion. Dr. Young stated that until the City addresses this situation, he does not know how they can afford any more traffic on 13<sup>th</sup> Street. On the west side of 13<sup>th</sup> Street are residences and there is always a concern for increased traffic there. Dr. Young said that when the last project (Domino's) was done, it was very professionally done; however, 13<sup>th</sup> Street was certainly a mess while they were doing it. There was mud, gravel and dust on the street. Dr. Young added that this proposed project will need a lot of dirt work done to get the property in order and he anticipates another big mess on 13<sup>th</sup> Street as he is concerned that a construction access will be made on 13<sup>th</sup> Street. He concluded that there is a potential for real problems in this area and he thinks the board should take a good look at this. Mary Anne Medlock told Dr. Young that the BZA was only addressing the canopy at the current time. Dr. Young said that would be great and he assumed that the other issues would be addressed at a later time.

Chairman Krieb asked if there was any rebuttal.

Bobby Deitz came forward and stated that in regards to the tanker trucks on 13<sup>th</sup> Street, they would try to avoid 13<sup>th</sup> Street if possible. He addressed mud on the streets and said that they would put the construction entrance wherever the city would like it. They try to enforce keeping the streets clean without the city doing it for them and in the case of the construction of Domino's, they had just stripped the lot down and were trying to get the retaining wall up when it started raining. Chairman Krieb requested that they try to avoid having tanker truck traffic on 13<sup>th</sup> Street and stated that he thought they could recognize additional car and small truck traffic over tanker truck traffic. Josh Vernon asked how much green space there would be and how many parking spaces there would be. Mr. Boeller came forward and said that there were typically small green spaces around all the islands. The islands will be between the front of the store and 12<sup>th</sup> Street and will have landscaping in each one. He stated that there will be parking in the front next to the building as well as on the canopy side of the building. Mr. Deitz added that he thinks there will only be room between 12<sup>th</sup> Street and the building for one row of parking

next to the building, a small amount of green space and the sidewalk. Ms. Dowdy asked what their typical signage is. Mr. Boeller said that they normally use a monument type sign, a sign above the door and in some instances they have their name on the canopies, but they are willing to abide by the City Ordinances. Mr. Deitz referred to the aerial shot of the property and said that in regards to the canopy, there are buildings closer to South 12<sup>th</sup> Street than this proposed canopy. Ms. Medlock explained that when 12<sup>th</sup> Street was widened, some of those were “grandfathered in” and they are not necessarily desirable. Mr. Deitz said that the canopy is not an enclosed structure that goes all the way to the ground. You can see through it and it’s hardly noticeable. Chairman Krieb asked how much distance was between the support pillar and the end of the canopy. Mr. Deitz answered around 14 feet. Ms. Medlock asked if they would still need a variance if there were fewer pumps. Mr. Boeller said that they would need 25 feet less if they went with 4 pumps; thus the variance wouldn’t be needed. The proposed canopy is 24’ x 120’. Chairman Krieb said that they would need to decide if 4 pumps would be feasible for them. Mr. Boeller said the typical site that they liked to work with is 1.5 acres. This property is a little less than 1 acre and the shape of the property presents another obstacle. They’ve tried laying it out differently on the lot to better utilize the space and this configuration seems to work the best. In the communities where they are located, Rhodes Convenience Stores want to be good corporate citizens and good neighbors so if there are issues with how they maneuver their tanker trucks because of public safety or any other issue, they are willing to do everything they can to alleviate that. Scott Seiber reiterated the 13<sup>th</sup> and Main traffic situation. He added that he has some real concerns with the size of the property and the ingress/egress of the tanker trucks especially on 12<sup>th</sup> Street during the busy times of the day. Mr. Seiber asked if they had looked at other properties that would give them more room for this proposal because he hopes that they are not trying to put something too large in this small space. Mr. Seiber added that he would also like for them to consider installing 4 pumps instead of 5. Mr. Boeller assured him that there are other pieces of property in Murray that are very attractive but they are very satisfied with the location of this property even though it is small. He added that they are the kind of business that does better in neighborhoods and not off the interstate. Their brand does not have a lot of value; however, it does bring value to the neighborhood. Mr. Boeller said he strongly feels that the customers will feel more secure if they can see the staff while at the pumps and does not think moving the pumps to the west will be a good move.

Chairman Krieb closed the public hearing and turned it over to the board for discussion. David Roberts clarified that this is the only time that this item would be heard in a public hearing, the Planning and Building Departments would be the only ones left to review this. He reminded the board that this is a permitted use for a B-2 zone and that if it wasn’t for the variance, the board wouldn’t be reviewing this matter, it would just be coming before the Planning Department. Mr. Roberts said that he did not know if they had the right to ask them not to be using 13<sup>th</sup> Street; however, he does agree with the comments with regards to the transport trucks. Josh Vernon stated that at some point in the future, as 12<sup>th</sup> Street businesses grow, 12<sup>th</sup> Street may be revisited for traffic control; thus, he wanted to raise the concern of encroachment further into the setback. Chairman Krieb asked Mr. Roberts if the State Highway Plan has anything on it concerning the future of 12<sup>th</sup> Street. Mr. Roberts replied that he was not aware of anything.

**Mary Anne Medlock made a motion to deny the request by PAJCO Inc. for a front setback variance and the placement of an accessory structure in a side yard at 106 South 12<sup>th</sup> Street. Josh Vernon seconded the motion and the motion failed with a 2-2 voice vote. Chairman Krieb and Scott Seiber voted no.**

Ms. Dowdy asked the board members if they had objections to the placement of the canopy in the side yard or was it just the front setback that they were opposed to. Ms. Medlock and Mr. Vernon both agreed it was the request for the front setback. Ms. Medlock stated that she did not have a problem with it being in the side yard. Ms. Dowdy said that at this point the board might ask the applicant if they would be

willing to cut the number of pumps from 5 to 4 and move the canopy back to the 50 foot setback. Mr. Vernon asked if the board could approve the side yard placement of the canopy and deny the front setback. He explained that this would allow the applicants to decide for themselves what they wished to do concerning the amount of pumps. Ms. Dowdy stated they would be allowed.

**Mary Anne Medlock made a motion to approve the request by PAJCO, Inc. for an accessory structure (covered canopy) to be placed in the side yard at 106 South 12<sup>th</sup> Street with it meeting the front yard setback as dictated in the B-2 zone. The variance is based on the unique shape of the lot and the topography of the land and that in order to develop this piece of property efficiently it requires the structure to be in the side yard. Denial of the front setback request is due to the visibility and traffic flow on the site. Josh Vernon seconded the motion and the motion carried with a 4-0 voice vote.**

**Questions and Comments:** None.

**Adjournment:** Mary Anne Medlock made a motion to adjourn. Scott Seiber seconded the motion and the motion carried unanimously. *The meeting adjourned at 5:47 p.m.*

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Chairman, John Krieb

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Recording Secretary, Reta Gray