

**MURRAY BOARD OF ZONING ADJUSTMENTS  
REGULAR MEETING  
WEDNESDAY, APRIL 17, 2013  
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, April 17, 2013 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5<sup>th</sup> Street.

**Board Members Present:** Mike Faihst, Mary Anne Medlock, Scott Seiber and Josh Vernon

**Board Members Absent:** Brad Darnall, John Krieb, Justin Pounds

**Also Present:** Candace Dowdy, Justin Crice, Reta Gray, David Roberts, Jennifer Tolley, Mike Pitman, Ed Marlowe, Tung Dinh, Tammy Rogers, Dr. Steve Farmer, and public audience

Presiding Chairman Seiber called the meeting to order and welcomed all guests and applicants. Chairman Seiber asked if there were any changes, additions or deletions to the March 20, 2013 regular meeting.

**Mary Anne Medlock made a motion to approve the BZA minutes from March 20, 2013 regular meeting as corrected. Mike Faihst seconded the motion and the motion carried unanimously.**

**Public Hearing: Review of Conditional Use Permit for the Night Owl – 1413 Olive Boulevard – Tung Dinh:** Candace Dowdy summarized the background for the review of this conditional use permit and reviewed some past history of The Night Owl being before the BZA. Ms. Dowdy stated this item was tabled last month by the BZA to give Mr. Tung Dinh time to submit a business plan as to how he could bring this business back into compliance and meet the intention he had when originally applying to be a recreational facility in a B-1 Zoning District. She reminded the Board the business plan was to address ways Mr. Dinh could keep the building's occupant load in compliance. Ms. Dowdy stated she had submitted the business plan to the Fire Marshal Dickie Walls and Mr. Walls indicated he was satisfied with the procedures outlined in the plan. Mr. Walls also requested an emergency plan that would identify policies and procedures for emergency situations. Ms. Dowdy went on to say that Mr. Dinh's business would receive yearly inspections and training would need to be documented for the staff of The Night Owl. Mr. Walls indicated to Ms. Dowdy that upon fire inspections, employees would be questioned for accountability on these emergency plans. Ms. Dowdy then identified the property with a PowerPoint presentation with aerial photography and photos.

**Josh Vernon made a motion to remove this agenda item off the table. Mike Faihst seconded the motion.**

Scott Seiber asked for some clarification of surrounding business and Candace Dowdy identified them with the aerial photography. Ms. Dowdy conveyed that Mr. Dinh hoped that the Board would consider allowing his conditional use to continue.

Scott Seiber opened the public hearing and asked if anyone would like to speak in favor of this application.

Tung Dinh, 809 Coldwater Road, Murray KY, was sworn in. Mr. Dinh presented the Board with an emergency plan entered as Exhibit A. Mr. Dinh stated he had gone through this emergency plan with Fire Marshal Dickie Walls and Mr. Walls stated if this plan was maintained it should be okay. Scott Seiber asked if his staff had been trained and what was supposed to happen with the training. Mr. Dinh said that Mr. Walls indicated that any procedural training would need to be logged. Ms. Dowdy said that Mr. Walls had suggested that he come up with these emergency procedures and gave him a checklist of items to cover when formulating this plan. Mr. Dinh said he would like to go through a full semester and look at the problems. Mr. Dinh said he would not have any more problems. Mr. Seiber said he would like to see Mr. Dinh's staff properly trained with emergency procedures. Mr. Seiber added that the occupant load problem is a dangerous situation because of the police officer's testimony. Mary Anne Medlock asked if Mr. Dinh will seek professional help for the training. Ms. Medlock said she viewed training as something formalized with a certificate in hand similar to what people go through for alcohol beverage control training. She went on to say this is the type of thing that should have happened from the very start of his business and not just because the police have been called. Ms. Medlock said she was happy to give Mr. Dinh the benefit of the doubt for another semester, but she wants real training. Mr. Dinh said he would agree to get professional certificates for the training. Ms. Medlock said ABC training might be necessary for his staff because of the hours of operation and Ms. Medlock would highly recommend it.

Some discussion was held by the Board on procedural operations when dealing with tickets and bracelets for entry or exit to The Night Owl. Josh Vernon said he thought another important issue to address would be procedures outlined in the case of another altercation. Mr. Vernon added this would be an example of something Mr. Dinh could iron out with specific plans of action and to show training to address the specific issues. Mr. Dinh said he will make sure his staff will have professional training and ABC training.

Officer Kendra Clere came forward to speak on behalf of the Murray Police Department. Officer Clere stated she had presented Mr. Dinh's business plan to the Police Chief and Assistant Police Chief. She said they liked the plan and thought it was a great plan as long as everything in the plan was fulfilled. They did want to make sure that Mr. Dinh kept everything under capacity, had no alcohol on the premises, keep patrons from congregating in front of the doors, and checked ID's for customers who smoke hookah. Officer Clere did say the ABC STAR training was pretty booked up right now with all the new businesses and it could take up to 6 months to get the certificates back in. Ms. Dowdy asked if it was too much to ask if a police officer make a routine drive by around The Night Owl. Officer Clere said they could do that and the Police Department already does this anyway because of the proximity to The Olive. Officer Clere said a problem she see's if that all of Murray's Bars or restaurants with alcohol close at midnight and people who are drinking do not want to go home. They overflow either to an establishment that is open like The Night Owl or may travel to bars open in Tennessee.

Tammy Rogers, 273 Pottertown Road, Murray KY was sworn in. Ms. Rogers has questions about the egress door on the south side of the property. She said parking is always an issue there

and that someone could park in front of that door that exit's Mr. Dinh's building. Ms. Rogers also voiced her concerns regarding the trash that ends up on her property that was addressed at the last BZA meeting. Scott Seiber said there at least needs to be striping and a sign that states no parking after 8 p.m. or be towed at the owner's expense. Ms. Rogers indicated she was going to rent some spaces to the Burrito Shack for the next semester. Ms. Dowdy stated the Board's job is to focus on the conditional use and the recreational facility to try to help avoid non-compliance in the future.

Tung Dinh came forward again to speak. He stated he had been at that location for about 20 years and under the fire code the egress door on the south side must be clear. Mr. Dinh said it is a part of the building and a part of an easement in between the two properties. Scott Seiber said that's also something his staff must be aware of when The Night Owl is open.

Scott Seiber closed the public hearing and moved to board discussion. The Board discussed either extending the conditional use permit or tabling the motion until a later meeting so that Mr. Dinh could show that the training has been completed. Josh Vernon said he hesitated to make training mandatory right away because of scheduling conflicts for Mr. Dinh's employees. Ms. Medlock stated she was happy with having Planning Staff monitor the situation and that way Mr. Dinh does not have to be brought back on multiple occasions. Ms. Dowdy said she could express to Dickie Walls that the Board would like to see some professional training for all his employees on how to handle emergency procedures. Josh Vernon asked if we could get a definition of a nightclub or recreational facility. Ms. Dowdy said they've looked at that previously but it is not clear. Ms. Dowdy went on to say it is up to the Board on any questions of interpretation of meaning.

Mike Pitman said we'd be looking for a definition that we're probably not going to find because it is not in the definition section of our zoning ordinance to give an example to follow. He said the definition is open for interpretation. Scott Seiber said he thought there were some steps Mr. Dinh needs to take before the Board offered another extension. Ms. Medlock stated the Board is either allowing the continuance of the conditional use permit or revoking it. Ms. Dowdy said she could get with Dickie Walls tomorrow and relay this information from the Board and look at getting the suggested training process started. Josh Vernon stated it was his impression reading through the Emergency Plan that Dickie Walls is satisfied with how the building is being used. Mr. Vernon continued on that the operational procedures were not within the emergency plan. Ms. Dowdy said the Fire Marshal Dickie Walls was satisfied with Mr. Dinh's proposed tickets/bracelets system and to see if this procedure works for a full semester. Ms. Dowdy said when the Fire Marshall does his annual inspection; staff would need to have that information logged and documented, with training for each employee.

Mike Pitman said one option would be continuing the conditional use permit provided that Mr. Dinh comply with the business plan he has submitted addressing capacity, loud music, recreational use of the facility, trash pickup, the emergency plan, and the fire marshal's recommendations. Josh Vernon said he thought the procedures were put in place and Mr. Dinh would need to get the training for his employees within a certain time period. Scott Seiber said the Board has asked for these procedures and he thought that Mr. Dinh was willing to follow through.

**Josh Vernon made a motion to allow continuance of the conditional use permit for The Night Owl as a recreational facility at 1413 Olive Boulevard with the following conditions; the fire prevention plan be followed through with training for employees, the permit being brought back to the Board at the end Murray State's 2013 fall semester, and that Mr. Dinh comply with his business plan submitted that addresses capacity, loud music, recreational use of the facility and trash pickup. Mike Faihst seconded the motion and the motion carried with a 4 – 0 voice vote.**

**Public Hearing: Dimensional variance request for additional signage – 1701 Highway 121 Bypass North – Dr. Steve Farmer:** Candace Dowdy used a PowerPoint presentation to identify the property at 1701 Hwy. 121 Bypass North owned by Dr. Steve Farmer. Dr. Farmer has three tenant spaces in his building; two of them are at street level facing the highway and the third business Ruth See N Sew is located around back in the basement of the building. Ms. Dowdy said that due to the widening of Hwy. 121 Bypass, Dr. Farmer is going to lose the freestanding sign that is currently on the property. Based on the dimensions of the front of the building 112 square feet of signage would be allowed. Personal Finance has a 52 sq. foot sign and Hair Ink Salon has a 50 sq. foot sign for a total of 102 sq. feet of wall signage. Ruth's See N Sew does not currently have a wall sign since they are located around the back of the building and with the removal of the freestanding sign they would like to place a wall sign on the front of the building. They are requesting a 4' x 6' sign for a total of 24 sq. feet. This would put the overall signage 14 sq. feet over the allowable amount.

Scott Seiber asked if it would make more sense to have Ruth's See N Sew sign on the right side of the building (west side). Ms. Dowdy agreed but since the Hair Studio is below that location it really only leaves space in the middle.

Dr. Steve Farmer, 1765 State Route 94 West, Murray KY was sworn in. Dr. Farmer showed an example drawing (Exhibit A) of what the proposed signage would look like. Dr. Farmer said the front of the building is about the only place feasible to place additional signage. Dr. Farmer said the owner of Ruth's See N Sew, Karen Smith, chose that location and relies on some drive by traffic.

Josh Vernon said it's a preferable solution to the sign that is there right now. Ms. Dowdy asked Dr. Farmer if either one of these businesses had their 911 address posted out on the front of the building. Dr. Farmer said he didn't know. Ms. Dowdy said that the posting of the 911 address is also mandatory by Fire Code. Ms. Dowdy said it may be benefited to put some large numbers on the building. Dr. Farmer said he would agree to that.

**Mike Faihst made a motion to approve the request for an additional 14 square feet of wall signage for the property located at 1701 Hwy. 121 Bypass North. This variance will allow Ruth's See N Sew to have a wall sign due to the removal of the freestanding sign because of the widening of Hwy. 121 Bypass North. 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. Josh Vernon seconded this motion and the motion carried by a 4 – 0 voice vote.**

Scott Seiber said the next item on the agenda was a Compatibility Hearing for a proposed residential PDP located on the north side of State Route 94 West – City West Properties, LLC – Matt Jennings. Josh Vernon recused himself from this agenda item and therefore quorum was not present to conduct business.

**Mike Faihst made a motion to table this item until the next regular meeting. Mary Anne Medlock seconded the motion and the motion carried unanimously.**

**QUESTIONS AND COMMENTS: None**

**ADJOURNMENT: Josh Vernon made a motion to adjourn. Mike Faihst seconded the motion and the motion carried unanimously. *The meeting adjourned at 5:56 p.m.***

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Secretary, Scott Seiber

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Recording Secretary, Justin Crice