

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, JANUARY 21, 2015
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, January 21, 2015 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5th Street.

Board Members Present: John Krieb, Linda Scott, Mary Anne Medlock, Terry Strieter, Josh Vernon and Bobbie Weatherly

Board Members Absent: Dennis Sharp

Also Present: Candace Dowdy, Robert Jeffries, Summer Grogan, Reta Gray, David Roberts, Officer Tim Fortner, Mayor Rose, Attorney David Perlow, Mallory Howard, James Yoder, Reggie Key, David Hudspeth, Chris Maley and public audience

Chairman Krieb called the meeting to order and welcomed all guests and applicants. He announced that there had been a few changes in the agenda from what was previously announced. The Compatibility Hearing on Mr. Dinh's proposal will not be heard because the Planning Commission tabled the item at the Advisory Meeting the previous night; therefore, the item is not moving forward at this time. Also, the Public Hearing for the Walmart signage had been changed to a review. Chairman Krieb asked if there were any revisions to the minutes from December 17, 2014 regular meeting. Robert Jeffries added some clarifications to "multi-use" from Mr. Dinh's proposal the previous month.

Linda Scott made a motion to approve the BZA minutes from the December 17, 2014 regular meeting as corrected. Terry Strieter seconded the motion and the motion carried unanimously. Mary Anne Medlock entered the meeting at 4:34 p.m.

Public Hearing: Request for a 7 Foot Side Setback Variance at 809 Olive Street – Robert and Mallory Howard: Candace Dowdy used a Power Point presentation to show the property at 809 Olive. The property is located in and surrounded by R-2 (Residential) zoning district. Robert and Mallory Howard recently purchased the property and are currently in the process of renovating the house. They have removed the old carport that was attached to the house on the east side and are proposing to add a new carport that will require a 7 foot 3 inch side setback variance. The original carport was approximately four feet off the east property line which did not meet the minimum ten foot side setback requirement. Ms. Dowdy explained that there were no records indicating that a variance was ever applied for at this location. The proposed carport will be longer, but only 2 feet 9 inches off the east property line. A retaining wall separates the properties at 807 and 809 Olive. Ms. Dowdy then showed a rendering of the new carport (which will also be attached to the east side). The Howards have presented Planning Staff with a copy of their Deed of Easement that was agreed upon with the property owners at 807 Olive where they will be allowed access to the retaining wall from the 807 side of the wall in order to be able to maintain and make necessary repairs to it. Ms. Dowdy stated that Mrs. Howard was present if the board should have any questions. She added that Planning Staff had not received any calls from any of the adjoining property owners in reference to the application.

Chairman Krieb opened the public hearing and asked if there was anyone that wished to speak in favor of the variance. There was no one. He then asked if there was anyone that wished to speak in opposition to the variance. There was no one; thus, he closed the public hearing and turned the item over to the board for discussion and a motion.

Terry Strieter made a motion to approve the request for a 7 foot 3 inch side setback variance on the proposed carport at 809 Olive Street with the findings that there were no concerns raised by surrounding property owners and the carport appears to be attractive and in no way diminishes the property. Josh Vernon seconded the motion and the motion carried with a 6-0 roll call vote.

Public Hearing: Dimensional Variance Request to Allow a Jet Ski to be Displayed on Top of Free-Standing Sign as a “Unique/Unusual Sign” at 515 South 4th Street – James Yoder: Robert Jeffries used a Power Point presentation to show the property at 515 South 4th Street where James Yoder has fastened a jet ski to the top of the free-standing sign. Currently there is one freestanding sign that advertises two businesses at this location which are both owned and operated by Mr. Yoder. (J&C Personal Watercraft and Novus Glass Repair) This property is located in a B-2 zoning district. After Planning Staff noticed the jet ski had been added to the newly constructed sign, a letter was sent to Mr. Yoder on November 25, 2014 informing him of what constitutes a sign. The definition was included in the letter:

“Any name, identification, description, display, illustration, or devise which is affixed to or represented directly or indirectly upon a building, structure or land, in view of the general public, and which directs attention to a product, place, activity, person, institution or business.”

Mr. Yoder was informed that the Sign Regulations further describes what the city refers to as “unique” or “unusual” signs:

“Unique or unusual signs, such as artistic renderings, murals, etc. are permitted in all zones, except residential, subject to the approval of the Board of Zoning Adjustments based on aesthetics, size, location, and effect upon the general area.”

Mr. Jeffries stated that adjoining property owners were notified and only one response was received concerning the variance. David Hudspeth at Main Street Youth Center sent an e-mail that implied that the Main Street Youth Center board was in favor of the owners being allowed to keep the watercraft attached to the sign. (*The e-mail was presented as Exhibit A.*) Ms. Dowdy explained that the city has not allowed mobile signs for years; however, there is one sign of this nature currently existing. It is the “grandfathered in” cow at Sirloin Stockade which is mobile and on a trailer. Mr. Yoder’s sign is within the regulations for size based on road frontage. Mr. Strieter asked if the sign was “top heavy”. Mr. Jeffries replied that they would have to ask Mr. Yoder that question.

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

James Yoder, 515 South 4th Street, Murray was sworn in. Mr. Yoder replied to Mr. Strieter’s earlier question and stated that the sign posts were actually set below the asphalt 2.5 feet. It is a 3 X 3 square tubing ¼” thick that was professionally constructed and structured. As far as the jet ski goes, a professional welded it to the top of the sign with very heavy duty brackets and it is his belief that it will not be going anywhere. The jet ski weighs approximately 175 lbs. because it is only a shell that has been completely gutted.

Reggie Key, Hwy 121 South, Murray was sworn in. Mr. Key stated that he is the property owner and he feels the sign fits well with the neighborhood and is very well constructed.

David Hudspeth, Administrator of Main Street Youth Center, Murray was sworn in. Mr. Hudspeth is in support of the sign 100 percent. He likes the sign and he thinks the sign looks good for the neighborhood. Mr. Hudspeth said that he had spoken to the Main Street Youth Center Board of Directors and each of them also approved of the sign.

Chris Maley, 512 South 4th Street, Murray was sworn in. Mr. Maley stated that his business is located directly across the street from the sign. He said that he has known Mr. Yoder for several years and he thinks the sign was well constructed. He added that from what he has seen, Mr. Yoder maintains the facility and grounds and feels that the sign will be maintained as well. He has no doubt that the sign will be safe.

Chairman Krieb asked if there was anyone that wished to speak in opposition to the variance. There was no one; therefore, he closed the public hearing. The item was turned over to the board for further discussion and a motion.

Josh Vernon made a motion to approve the dimensional variance request to allow a jet ski to be displayed as part of the free-standing sign as a “unique/unusual sign” located at 515 South 4th Street with the findings being that the nature of the sign is appealing and appropriate for the type of business that it is, it doesn’t go against any other regulations and he feels that it falls under the definition of a “unique/unusual” sign. Bobbie Weatherly seconded the motion and the motion carried with a 6-0 roll call vote.

Review: Multiple Wall Signs on Walmart Building – 809 North 12th Street: Candace Dowdy used a Power Point presentation to show the current signage at Walmart located at 809 North 12th. The property is located in a B-2 zone and surrounded by B-2 zoning. In 1996 when Walmart was actually built they received a variance on their wall signage. At that time they had requested a little over 1500 square feet; however, the board approved the variance for 1,031 square feet. In 2009 Walmart contacted the Planning Department with concerns of updating their signage again. At that time, they reduced the overall wall signage down to 549 square feet with a total of 13 wall signs. Walmart is going to be repainting the outside of the building sometime in the near future and at that time they will be updating their signage once again. In doing so, they will decrease the number of wall signs from 13 to 10 but will increase the square footage by 28.07 square feet, totaling at 577.99. This still falls within the 1,031 square feet that they were approved for in 1996. Most of the replacements are at the Tire and Auto Center in the back of the building. Ms. Dowdy compared the existing signs to the new proposed signs. She added that no action was required on behalf of the BZA and that she was just reviewing the changes in case there were questions brought up in the future.

Interpretation: Definition of a Restaurant Located in a B-4 Zoning District: Ms. Dowdy explained that Planning Staff would like for the board to make an interpretation as to whether limited seating in a grocery store for the consumption of food would be considered a restaurant in a B-4 zoning district. The definition of a restaurant as per the zoning ordinance is:

An eating establishment whose primary use is designed to permit or facilitate the service of meals, sandwiches, ice cream, beverages, or other food served directly to, or permitted to be consumed by patrons within the building, in automobiles or other vehicles parked on the premises, or permitted to be consumed by patrons elsewhere on the site or outside the main building.

Ms. Dowdy said that someone is interested in putting in a grocery store/market with a deli in the former Domino’s building on South 12th and there had been some questions concerning this matter. They are

basically inquiring about having around 15 stools around a griddle and serving tacos or burritos such as in a deli type environment. The past records show that Domino's did not go through a PDP process when they were located at this location but went through a review of a Conditional Use in a B-4 zone. She added that staff also looked at Sonic and it was also approved as a Conditional Use. This particular interested party is not intending on having a restaurant as a primary use, but as a secondary use. The grocery store will be the primary use which is a permitted use in a B-4 zone. Planning Staff thought it necessary to bring before the board to see if they wanted the item to be taken through a planned development process. Parking requirements would not increase as the restaurant would be looked at by the Fire Marshal as Mercantile Use and the grocery store would be looked at as a Consumer Service Type Business. Therefore, the parking would be calculated on the gross floor area. Ms. Dowdy explained that she has a floor plan for the proposal but did not want to get into specifics as this is not a public hearing. Planning Staff is just looking for direction in the matter. Most of the B-4 along 12th Street backs up to residential zoning and it serves as a buffer. The tenant has shown willingness to put up a barrier between them and the residential zoning to the east. David Roberts spoke up and stated they were actually there to look into the grocery store/market with a deli as to whether it should be processed as a PDP or if it should be permitted under a Conditional Use Permit. He added that since this was not a public hearing, they should not be discussing specifics at this meeting. Mary Anne Medlock stated that as a board they need to accept the person's intended uses as primary and secondary instead of questioning them and asking them to make changes in the middle of the process. The ordinance is scheduled for updates and at that time, changes can be made to address these types of situations. This is a permitted use in a B-4 zone as it has been presented with the grocery store/market being the primary use.

Mary Anne Medlock made a motion to accept the intent that has been brought forward as a permitted use in a B-4 zone because the primary use of a property is a grocery store/market with the deli style restaurant being the secondary use. Josh Vernon seconded the motion and the motion carried with a 6-0 roll call vote.

Questions and Comments: None

Adjournment: Linda Scott made a motion to adjourn. Terry Strieter seconded the motion and the motion carried unanimously. *The meeting adjourned at 5:34 p.m.*

Chairman, John Krieb

Recording Secretary, Reta Gray