

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, DECEMBER 18, 2013
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, December 18, 2013 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5th Street.

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

Board Members Absent: None

Also Present: Justin Crice, Candace Dowdy, David Roberts, Mike Pitman, Reta Gray, Hawkins Teague, Jennifer Tolley, DeAnn and Brad Barnett, Kevin Cunningham, Marsha Dorgan, Brandon Edmiston, Attorney Trevor Coleman, Rick Ellis, Robert and Andrew Pilgrim, Mason and Wilma Billington, Stephanie Carpenter and public audience

Chairman Krieb called the meeting to order and welcomed all guests and applicants. Chairman Krieb noted some minor changes to the minutes from November 20, 2013 regular meeting and asked if there were any additional changes, additions or deletions that needed to be made.

Terry Strieter made a motion to approve the BZA minutes from the November 20, 2013 regular meeting as amended. Josh Vernon seconded the motion and the motion carried unanimously.

Public Hearing: Conditional use permit request for two non-related persons to occupy the premises at 110 Hickory Drive – Claire Barnett: Candace Dowdy used a Power Point presentation to show the property at 110 Hickory Drive that is owned by Claire Barnett. The property is located in an R-2 (Single Family Residential) zoning district and is surrounded by R-2 zoning to the north, east and west and Government zoning to the south. Ms. Dowdy explained that she had received an inquiry from an adjoining property owner as to how property could be used in an R-2 zoning district. At that time it was brought to staff's attention that the property at 110 Hickory Drive was possibly being occupied by two non-related persons. A letter was sent to Ms. Barnett stating that the property was possibly being used in violation of the R-2 zoning regulations. Upon receipt of the letter Brad and DeAnn Barnett, parents of Claire Barnett came into the office inquiring about the letter their daughter had received. They indicated that the property at 110 Hickory Drive had recently come on the market for sale and that they had helped Claire purchase the home but the deed to the property was in Claire's name. At the time she purchased the house she was living in an apartment on Stanford Drive with one other girl. When Claire and her friend moved into the house in August of this year she was not aware that she was in non-compliance with zoning regulations. The Barnetts informed Ms. Dowdy that Claire and her friend are seniors at Murray State and that they have three semesters remaining before they graduate (two semesters of class and one semester of student teaching). Claire's friend is from Eddyville, KY and she only resides with Claire during the months that school is in session and she goes home during Christmas, spring and summer breaks. She only pays rent for the months she is there. Claire Barnett is requesting permission from the board to allow her friend to reside on the premises with her until she graduates from Murray State. They have recently widened the driveway to accommodate the additional vehicle and plan to pave that area in the spring. Staff informed Mrs. Barnett that Claire would either have to bring the property into compliance or apply for a conditional use permit. Ms. Dowdy explained that all adjoining property owners were notified of the meeting. Planning Staff has not received any calls concerning this request either in favor or in opposition; nor have there been any complaints reported.

Chairman Krieb explained that he had asked Planning Staff to document the most recent previous conditional use permits that were related to the issue of non-related persons living in the R-1 and R-2 zones and what their outcome was. Mr. Crice compiled that list and of the last five conditional use permits since 2011, all five were denied. Each had a different circumstance and was granted a different time limit for bringing the property into compliance. Mr. Krieb opened the public hearing and asked if there was anyone that wished to speak in favor of the conditional use permit.

Brad and DeAnn Barnett of 2107 Southwest Drive, Murray were sworn in. The Barnetts felt that they created the situation by purchasing the house and allowing the two girls to live together. None of them were aware of the zoning regulations that prohibited non-related persons to live together in an R-2 zone. Mrs. Barnett stated that when the house came on the market, they thought it would be perfect for Claire. They made the decision to purchase the property mainly because of their situation. Brad has ALS and it was important to them to get Claire set up in a stable environment that Brad could be a part of. Shelby, Claire's roommate is from Eddyville as Ms. Dowdy stated earlier. Claire and Shelby shared an apartment before moving into the house on Hickory. Financially this has been a good financial situation for Shelby as she only pays rent during the months she is living in Murray. Mrs. Barnett said that they felt they had an obligation to Shelby when they bought the house to offer her the same arrangement that they did in the apartment. She continued that if the board would not permit the conditional use permit, they would like for them to consider letting Shelby live there until she finished school and her student teaching. Mrs. Barnett added that if Shelby decided to move out in the future, Claire did not want another roommate. She said that they had talked to the adjoining property owners and asked them to sign a paper stating that they did not have any objections with Shelby living there for three more semesters. Only one property owner was reluctant to sign because she was concerned with the additional traffic and in addition she had commented that she wouldn't sign anything unless her husband could look it over first. The Barnetts have spent over \$13,000.00 on the house since purchasing it by making repairs on the inside as well as the outside. Their intention is to improve the value of the property. Josh Vernon asked if the long term goal of the home is to be Claire's residence. The Barnetts answered, "Yes." Scott Seiber asked if they bought the home through the owner or through a realtor. Ms. Barnett replied that they bought it through a realtor and she did tell them that it was zoned R-2 single family, but they did not remember if she elaborated about that. This was a big step for the Barnetts and they did not know to ask questions about the zoning as they are residents of the county themselves and are not familiar with zoning. Mr. Seiber asked what date they would actually be graduating. The girls will be doing their student teaching starting in January of 2015 and graduate in May of that year. The Barnetts are asking for them to be able to reside together until Shelby finishes her student teaching (provided she is student teaching in Murray). Shelby may or may not be in Murray then because if she student teaches closer to Eddyville, she will live in Eddyville. Ms. Barnett continued that the rent money that is coming in is not that great, but it is more important to them to be able to help Shelby out. Terry Strieter asked if they planned on graveling or paving the additional driveway. They replied that they planned on concreting it, but because of the weather conditions, it would be spring before that would happen. The Barnetts concluded that Claire currently works part time with DeeAnn and she has intentions of remaining in the house after graduation. The facts that Claire is very close to her parents and that she also has a boyfriend here leaves them confident that she will remain in Murray.

Chairman Krieb asked if there was anyone that wished to come forward to speak in opposition to the request.

Kevin Cunningham, 111 Hickory Drive, Murray was sworn in. Mr. Cunningham stated that he and his wife had purchased their home in 2006 which is on the corner of Locust and Hickory. They enjoy their street and neighborhood. He said that there is not a lot of property movement on the street as far as sales and transactions. Mr. Cunningham actually grew up in the area and when their home became available, they thought it was naturally a place that they desired to live and raise a family. When they bought the

house they felt it was in a great location with a close proximity to campus. It was also located in an R-2 Single Family zoned area. They did not want to live in a multi-family environment where there were non-related people living together. Mr. Cunningham revealed that he was the neighbor that initially called the Planning Department requesting the information about R-2 zoning. He had noticed that two people who were not related were living across the street. Mr. Cunningham said that the place looks nice since the two girls moved in and has been kept well on the outside. Initially the weekend of MSU homecoming he noticed a lot of comings and goings during the late hours with taxi cab traffic. That situation aggravated him a little and that was initially why he had called Ms. Dowdy. Mr. Cunningham said that the Barnetts had stated that they knew the property was R-2 before purchasing it and it seemed to him since they were aware of that, they should be made to bring the property into compliance immediately. Mr. Cunningham is not a fan of conditional use permits and he thinks what the Barnetts are asking for is excessive. Mr. Cunningham continued that in addition to Shelby living with Claire, Claire's boyfriend is there on numerous occasions overnight. He doesn't know if he is actually living there or not, but out of the last 5 nights, he has been there all 5 nights. Mr. Cunningham said that he knew that the Barnetts were nice people and he didn't want to stir anything up, but he thinks that maybe their daughter is taking advantage of them. Mr. Seiber asked if the comings and goings happened frequently during the night or if the instance that Mr. Cunningham described was a onetime occurrence. Mr. Cunningham replied that it wasn't frequent, but it had happened more than once. Mr. Cunningham asked the board to decline the request for the conditional use permit and have them bring the property into compliance immediately.

Marsha Dorgan, 1622 Miller Avenue, Murray was sworn in. Ms. Dorgan stated that she also lives in an R-2 zoned area and has since 2001. Ms. Dorgan said that she knows that people are constantly applying for conditional use permits to allow them to live in R-2 zoned areas and she does not think that is right. Ms. Dorgan said that the only house in her neighborhood that has been changed from R-2 in the last 12 years has been condemned. She explained that some nearby residents had applied for conditional use permits and were denied; however, they continued to use the property as multi-family. She named the Bradley house as one of those in non-compliance. Ms. Dorgan said that she frequently calls the police to report loud noise coming from parties that are going on in her neighborhood. The no parking signs have disappeared from the streets and now cars are parking everywhere, making it impossible to drive down the street. Ms. Dorgan said that she has been coming to meetings and speaking up for years. She stated that the Barnetts seem like nice people, but there are rules and regulations in this town and they are not being abided by. Ms. Dorgan said that a lot of time is spent in making rules and she would like to see those rules enforced and Murray cleaned up.

Chairman Krieb asked the Barnetts if they had any rebuttal.

Mrs. Barnett came forward. She stated that they were aware that their daughter had a boyfriend and that he stayed over at her place on occasions; however, he has a residence of his own and does not reside there. Ms. Barnett said that as a neighbor, (she addressed Mr. Cunningham) the best way to deal with a problem is to talk with them. She said that they are nice people and they would be willing to try to work with him and try to resolve any issues that he has.

Chairman Krieb closed the public hearing and turned it over to the board for discussion. Mr. Krieb said that they are aware of what the history has been for conditional use permits as they viewed that information at the beginning of the meeting. All five were denied in the recent history. There are others that were pointed out by Ms. Dorgan that had been approved from an earlier time period. Josh Vernon asked Ms. Dowdy for the definition of a family. Ms. Dowdy referred him to the definition of a family as it is stated in the Zoning Ordinance. Ms. Dowdy said that they feel very comfortable with the wording of the Ordinance and she then read that particular section aloud. Ms. Dowdy stated that the interest is not in the ownership of the home, but the occupancy of the home. Mike Pitman commented that there was a case

several years ago that was litigated where the court upheld Murray's Ordinance regarding the family definition. He explained that he did not think that the Barnetts were arguing the fact of whether a family was living in house, but they were asking permission for Claire's friend Shelby to continue to live there. Mr. Stricter asked Ms. Dowdy if there was room for three automobiles if the side driveway is used. Ms. Dowdy replied that there is. Mr. Krieb asked if the extension of the driveway would violate any boundary issues. Ms. Dowdy replied that it would not since the Barnetts are well within their property lines. Ms. Dowdy continued that they do not have staff to control these areas on a daily basis; however, when there is a complaint made the Planning Staff does follow up on them. She added that when conditions are placed on a conditional use permit, the board can review it at any time and if found that the applicant is non-compliant they have the right to revoke that permit. Mr. Seiber said that he has served on this board for 21 years and this is the most difficult issue to deal with and that is the reason they are dealt with on a "case by case" basis. In recent years he feels that the board has taken a stronger look at these kinds of things because they are very sensitive to single family neighborhoods. At the same time, they try to be fair to all parties involved. He added that he disagreed with Mr. Cunningham in that a person should be granted a reasonable time to move if the board decided in that way. Mr. Vernon commented that from the signatures that had been received, he does not feel that Claire and her friend had been obnoxious neighbors and that outside of that one instance, there were no other complaints. He added that when his children have birthday parties, the driveway is full at his home and people are parked in the street. Linda Scott commented that if the permit was allowed, that could possibly open that area up to future conditional use permits which could affect the R-2 status of the neighborhood.

Josh Vernon made a motion to deny the conditional use permit request for Claire Barnett to allow two non-related persons to occupy the premises at 110 Hickory Drive. The property owner must bring the property into compliance by having Shelby Snow vacate the residence by the end of May 2014 on the findings that the long term goal for this neighborhood is not to set a precedence for allowing conditional use permits for multiple unrelated persons to live in a residence and that there has been opposition indicated to this request by neighbors. Terry Stricter seconded the motion and the motion carried with a 6-0 roll call vote. Bobbie Weatherly abstained from voting.

Public Hearing: Conditional use permit review for proposed residential planned development project at 807 & 809 Coldwater Road – Tung Dinh: Chairman Krieb explained that the request for a conditional use permit for the property at 807 & 809 Coldwater Road for Tung Dinh will not be heard at this time because the project was tabled at the Planning Commission meeting the previous night; therefore, it will not appear on the agenda until it is forwarded on from the Planning Commission.

Public Hearing: Request for parking space variance at 1415 Main Street – Corvette Lanes – Brandon Edmiston: Candace Dowdy used a Power Point presentation to show the property located at 1415 Main Street. Brandon Edmiston recently purchased the Corvette Lanes property. Mr. Edmiston is in the process of renovating the building inside and outside. He is proposing to renovate the 21,451 square foot building to continue the operation of the bowling alley as well as a 239 seat restaurant with both party and arcade rooms. (The bowling alley will be approximately 10,500 square feet leaving 10,951 square feet for the restaurant.) Mr. Edmiston's attorney, Trevor Coleman has indicated that the type of business that he plans to open is very similar to a Dave and Buster's Restaurant. The property is located in a B -1 Neighborhood Business District and is surrounded by B-1 zoning in all directions with Government property (Murray State University) adjacent to the northeast. The most recent use of the building was for the bowling alley, two retail spaces and one upstairs apartment occupied by the managers of the property. A large portion of the upstairs has been used for storage purposes for several years. The existing property has 59 parking spaces. Since Mr. Edmiston is proposing to use a large portion of the building for a restaurant that seats over 100 people they are required to obtain a building

permit and bring the building up to current fire and building codes. Based on all the uses of the building they would be required to have a minimum of 178 parking spaces. The bowling alley is proposing to have 18 lanes with requirements of five parking spaces per lane. The restaurant would be required to have a minimum of 88 spaces based on the seating capacity. If the parking was calculated on gross floor area they would be required to have a minimum of 110 spaces. With portions of the building serving a dual purpose for the restaurant and the bowling alley, Planning Staff felt like the requirements could be considered on the seating capacity instead of the gross floor area. Based on this information they will be seeking a 120 parking space variance. Ms. Dowdy continued that since the parking requirements have not been updated in several years, Planning Staff sometimes uses a Parking Standards book that gives average parking requirements for different cities around the United States for a particular use for comparison. Ms. Dowdy said that when Mr. Dinh had purchased the former "Owen Grocery" building, he was required to have additional parking for his proposed restaurant. Mr. Dinh chose to purchase additional property to provide some of that parking and in the end only had to request a 15 parking space variance. Mr. Coleman has indicated to Planning Staff that his client is looking at potential properties within the area that could provide additional parking for the restaurant and bowling alley. Ms. Dowdy showed a new proposed floor plan for both the first and second floors. The outside of the building will be totally renovated. Ms. Dowdy stated that the size of the building will not be altered; however, since the use of the building is changing it was necessary to bring this item before the board. Mr. Strieter asked if they knew what the hours of operation would be for the restaurant since that would impact using the spaces of surrounding businesses. Mr. Vernon asked if they were proposing a rear entrance to the building. Ms. Dowdy replied that they would have a rear entrance and there will also be enclosed stairwells leading to the second floor on both ends of the building and one of them will lead to the back parking lot. (The Fire Marshal has looked at these and approved them.) Ms. Weatherly asked if the businesses to the east would be willing to share parking spaces. Ms. Dowdy said that she had spoken to Matt Bartholomy and he indicated that he is very limited on his parking; however, Ms. Dowdy thinks that those businesses currently try to work together on their parking situation by sharing spaces. Main Street Pizza closes around 8:00 p.m. and is not opened on Sunday so those spaces would be available after 8:00 and on Sundays. Mr. Dinh has a parking variance for his restaurant; therefore, he has to maintain his parking. Ms. Dowdy stated that she had counted the parking spaces around the Lutheran Church and there are approximately 90 parking spaces in the rear that could possibly be shared space when the church was not meeting. Even though she is not sure what the hours of operation will be for Mr. Edmiston's business, she anticipates that with the other businesses and church having peak hours differently than Mr. Edmiston's business, there should be an acceptable amount of parking available. Murray State students will have the campus parking available to them and the bowling alley will be within walking distance for many.

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

Trevor Coleman, 408 Main Street, Murray and Brandon Edmiston, 2384 US Hwy 641 South were sworn in. (Mr. Coleman is representative for Edmiston Retail Division and Brandon Edmiston, who recently purchased the property.) Attorney Coleman stated that Mr. Edmiston is in the process of renovating both the inside and outside of the building. (*A rendering of the outside of the building was shown and presented as Exhibit A.*) They are attempting to replace an eyesore with a much more appealing façade and at the same time preserve "old Murray" while bringing it into the present. The inside of the building has been gutted and there are building permits to be submitted based on the outcome of the BZA meeting. Mr. Edmiston has now purchased the two tracts of land located at the back of the bowling alley. It hasn't been decided what they will be used for at this time. There is a garage on one of the tracts that could be used to store bowling equipment and supplies or the property could be used for additional parking. Mr. Coleman stated that they are quite a bit short on the required parking spaces but by sharing the church's spaces, they feel this will resolve that issue. There is an abundance of parking available behind the

church and the church's hours will be entirely different from this proposed business. Sunday morning and Sunday nights will be the church's big times and the restaurant will not be opened at all on Sunday. Mr. Coleman clarified that they are estimating that their peak times of operation will be from around 4:00 p.m. until midnight. Liquor will be available. Mr. Coleman stated that they were able to approach Emanuel Lutheran Church and sign a reciprocal agreement with them that says they are granted the right to use their parking lot. (*A copy of this agreement was presented as Exhibit B.*) Mr. Coleman said that he has lived in Murray all his life and has never seen the bowling alley lot full but it is their hope that it will be full after this is over. The Cycle Shop and The Coffee Shop owned by Andy and Joe Gupton are adjacent to this property and they have also signed a reciprocal agreement. This agreement may not prove beneficial as those businesses only have a limited amount of parking spaces available. The Cycle Shop closes about the time that the bowling alley would be having their peak time so their 10 spaces wouldn't be available until that time. Murray State is another possible scenario that can be used. Mr. Coleman contacted John Rall, the attorney for MSU, by letter at the end of November and asked if MSU would be willing to enter into a similar agreement that they have with the church and the Guptons. Mr. Coleman stated that they would be prepared to offer MSU some type of student discounts. Mr. Rall replied that he would tender it to the board. The MSU board should be meeting the following night to vote on this; so hopefully he can get some type of reciprocal agreement with them as well. At one time MSU had a bowling league; however, there are no bowling lanes available on campus for practice. Mr. Coleman said that they feel that the requirement of 178 spaces is a bit unrealistic; however, they think with the reciprocal agreements, they will come close to that requirement. The bowling alley and the restaurant should work hand-in-hand. The restaurant will be along the lines of a Rafferty's and the bowling alley will be a nice facility for the kids to go to. Mr. Coleman stated that if the board had questions concerning the building Mr. Edmiston and his Chief Operating Officer, Rick Ellis could answer those questions. Mr. Vernon asked how the customer would know where they could park. Mr. Coleman explained that the church and the bowling alley have shared parking lots for years. They do plan on posting signs that say that the bowling alley parking lot can be used at certain hours for church parking and the church parking will be available for bowling alley/restaurant parking during certain hours. Mr. Seiber asked how many spaces would be available with the reciprocal agreements. Mr. Coleman replied that with the agreements (excluding Murray State) and the two new tracts (which would provide 6-10 additional spaces) and the number that they have now, he thinks they will be close to the requirement. Ms. Dowdy explained by calculating the 90 spaces from the church and the 59 spaces they currently have, that puts the total parking up to 149 which will leave a variance of 30 spaces.

Mr. Coleman stated that this set up will be similar to a Dave & Buster's and described them as a very nice restaurant where you can order a steak with current locations in Nashville, Atlanta and Cincinnati. Dave & Buster's facilities are actually located side by side to the bowling alleys where you can get a beer and hot dog from a hot grill. There are also games and of course bowling in this facility. Mr. Edmiston stated that the restaurant will only be opened for dinner which will coincide nicely with Murray State hours as well as the church activities. Mr. Coleman revealed that the total dollars involved with this renovation will be around 1.4 or 1.5 million dollars. It will be a building with old time charm as well as a "draw" that Murray will be proud of. Mr. Coleman said not to discount the fact that they are keeping the original building. It would have been much less expensive to demolish it and start all over; however, he said the value of restoring something to its 1950's or 1960's version is fairly lucrative. Mr. Edmiston stated that the building was once the Collegiate Restaurant and the rendering is very similar to the original building. They have plans to tear the brick off the front of the building and replace it with the 50,000 bricks that they secured from the gates that were used to the entrances of Murray State. Mr. Edmiston stated that they had actually tried to pressure wash the front of the building with no avail. After living in several different places all over the country, he decided to come back to Murray with his wife, 3 children and another one on the way. Mr. Edmiston said that when he purchased the property he had no idea what he would do with it. The biggest complaint that he has heard has been that there is nothing for kids to do in Murray. They kept the bowling alley opened for about a month after they purchased the property and during that time

his kids learned to bowl. He did not think his kids would like it if he tore it down; thus, the decision to revamp the bowling alley. He said that there are so many people in the community that this project will impact involving so many different age groups. It is rare that you see this type of recreation in any city and he hopes everyone comes out and supports them. Josh Vernon was very complimentary of this proposal. He thinks that it is much needed in the community and he likes to see it happening. He added that he personally thinks that the parking will work itself out. Mr. Vernon said that he would like to see the current seven parking spaces in the front of the business removed where the front could be left open for pedestrian traffic. This would prevent vehicles from backing out in the street (which is quite dangerous). Mr. Edmiston explained that Matt B's building is actually closer to the street and the parking in front of his building is dangerous as well. Some of the other board members suggested that the parking in the front be eliminated and green space provided in that area. Handicap parking was discussed. Mr. Edmiston stated that all the handicap accessibility will probably be located at the front of the building because the building is level to the ground on that side of the building. Ms. Dowdy commented that they would probably be required to provide six or seven spaces for handicap. Once the old concrete is busted up in the front of his building, Mr. Edmiston thinks it will be nice to have some striped parking spaces available in the front; however, he does think that most everyone will prefer to park in the back.

The main entrance will be in the back of the building. Double glass doors have replaced the single door in the back and the width of the hallway has been doubled. Mr. Edmiston said that they do not have a rendering of the back of the building, but it will look almost as good as the front. Mr. Edmiston continued that there were previously several small retail businesses along the front of the building that have been done away with. Since purchasing the two small tracts in back of the building, they are open to buying any other property that could be used to increase the parking. They are looking at reconfiguring the layout to utilize this space efficiently. Mr. Edmiston then addressed the square footage of the upstairs. He brought up the fact that the square footage for the upstairs was not 11,000 square feet as Ms. Dowdy had stated earlier. The square footage of the restaurant (which is 80 feet x 45 feet) totals 3600 square feet and with the kitchen area added in, it's around 5,000 square feet. Ms. Dowdy stated that Barry Morris at Ace Design had given her those numbers.

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

Scott Seiber said that he thought that the reciprocal agreements that they have come up have almost resolved the parking issue. Mr. Pitman advised the board to go ahead with some sort of motion even though they do have the reciprocal agreements in order to set parameters for the property. Ms. Dowdy indicated that she had spoken to Mr. Coleman about the parking across the street at the Gupton's property and informed him that there were also residential apartments upstairs from the restaurant and bike store which required at least eight parking spaces; therefore, she did not think they should rely on that space for their overflow. Leaving the Gupton property off will leave them with a need for at least a 29 space variance.

Scott Seiber made a motion to approve a 40 parking space variance for the property at 1415 Main Street based on the proposed use of a restaurant and bowling alley as presented. Any expansion of the use of the building requiring additional parking will need to be revisited by the Board of Zoning Adjustments at that time. It should be noted that reciprocal agreements have been reached with several property owners in the immediate area that will help alleviate the need for additional parking spaces. 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 the motion and the motion carried with a 7-0 voice roll call vote. *At 6:40 Chairman Krieb declared a 5 minute recess. The meeting resumed at 6:45 p.m.*

Public Hearing: Conditional use permit request to allow three non-related persons to occupy the premises at 208 Woodlawn Avenue – Andrew & Robert Pilgrim: Justin Crice used a Power Point presentation to show the property at 208 Woodlawn Avenue. Robert Pilgrim purchased the property in July of this year and currently Andrew Pilgrim and two friends live in the house. This property is located in an R-2 (single family residential) zoning district with R-2 zoning surrounding it in all directions. After receiving a complaint for possible non-compliance on the use of the property and parking on the street from a neighbor, Planning Staff followed up with a letter to the property owner. Robert Pilgrim responded to the letter and was informed of the zoning violation. He was also informed that he would either need to bring the property into compliance or apply for a conditional use permit. Mr. Pilgrim did not think there were any issues with multiple people residing in an R-2 zoning district as long as one of the residents was the owner of the property as his son Andrew is. After speaking with Mr. Pilgrim staff made a site inspection of the property and found one car in the driveway and two cars parked along the street on each side of the driveway. Mr. Crice showed aerial shots of the property and surrounding properties noting that there are some properties where the property owners installed gravel or paved areas close to the street for extra parking. These areas were constructed without the city's approval. Mr. Crice clarified that this is not the situation at 208 Woodlawn and there is not anywhere for additional parking at this site. Ms. Dowdy asked Mr. Roberts for an update on the new parking standards that are being looked at by the city. Mr. Roberts explained that the new parking standards will probably prohibit a lot of on street parking. This item is going through review by the City Council at this time. He continued that he did not know all the specifics of the document; however, it is rather lengthy. Mr. Roberts concluded that using the street for future parking should not be counted on. Ms. Dowdy stated that there are several streets in town where parking is allowed on one side of the street and there are issues. She explained that even in multi-family housing Planning Staff tries to make sure that there is ample space to accommodate parking for vehicles without using the street. Some of the older streets are not as wide as the newer ones and when vehicles don't park close enough to the curb, there isn't a lot of width for other traffic on the street. Ms. Dowdy was not sure where the property lines were for this particular property; therefore, it would be difficult to say if the driveway could be widened. Chairman Krieb referred back to the history of the five conditional use permit requests that were reviewed in the last two years as well as the one that was heard earlier in the meeting. The results of the requests were that all six were denied. All were provided with what the board thought was a reasonable time period to bring the property into compliance with the zoning requirements.

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

Robert Pilgrim, 1216 Wilkins Road, Benton and Andrew Pilgrim of 208 Woodlawn Avenue, Murray were sworn in. Robert Pilgrim stated that they are asking for conditional use of a property. Mr. Pilgrim indicated that he had spoken to Ms. Dowdy and asked for her interpretation of the ordinance and she said that she would not give an interpretation and that only the Board of Zoning could do that. Mr. Pilgrim said that they would also like a full definition of family. He then stated that they do not feel like letting Andrew live in the home with two non-related persons is applicable because they are not asking for anything that would affect the public health or safety. Also, by allowing Andrew to do that would not in any way impair the integrity of the district in which the property is located. They are asking for a conditional use, but stating for public record that they do not understand how this is applicable to them. They are willing to comply with any reasonable directives in modifying the parking right-of-way or limit the number of vehicles by riding bikes or parking their vehicles at Andrew's place of business (which is Gigabytes Cafe). They are also willing to make any other reasonable modifications to the property or residence and comply with any proximity property lines. When they purchased the property there was

already a graveled area for parking that was outlined with landscape timbers. They moved the timbers when they were trying to clean the place up a little after moving in, but they can turn that area back into a driveway and pave it if necessary. Mr. Pilgrim said that there will be more than enough room for two cars to park side by side. Mr. Pilgrim explained that the reason there were cars parked in the street for several weeks during October and November was that Andrew has been conducting business meetings at his home for his business, Gigabytes Café and Deli. Mr. Pilgrim added that they did not realize that it was against the rules to park on the street. That is no longer an issue because those meetings are over now. Mr. Pilgrim stated that the person that voiced the original complaint (John Nolin) said that they do not have a problem with the boys living there together; their concern was about the additional cars which were there during the meetings. Mr. Nolin did not want to be criticized by the BZA for contradicting himself so he decided not to sign their petition supporting them in the conditional use. Mr. Nolin also indicated that he would not be attending the meeting. Mr. Pilgrim then presented the petition that all the other neighbors had signed. (*The petition was entered as Exhibit A.*) When Andrew moved into the home it was close to his business and he decided to share expenses with two of his friends to make it possible for him to live there. If Andrew has to cover all the expenses himself while trying to get his new business up and running, he will probably have to find another place to live and they'll have to do something else with the property. They are asking for an unlimited but non-extendable transferable conditional use permit so that Andrew can stay in the house with two friends who are non-related. If the conditional use is not allowed, they are asking that the board give Andrew one year before the others have to move out so that he will have ample time to make his business profitable. Mr. Pilgrim stated that the property was purchased with the purpose that Andrew would be one of the persons living there. They thought that as long as the three people living in the house were sharing expenses and responsibilities of upkeep where one of those persons was the owner that should not be an issue. Mr. Pilgrim continued that in 2005 a conditional use was granted to one property in the vicinity to allow a college student to continue to live at a home with non-related persons for his four years of college at MSU. Mr. Pilgrim continued that there are other properties on the street that are "grandfathered in" multi-family dwellings; a quadraplex on Woodlawn, as well as the house north of the Pilgrim's with an apartment up above it. Ms. Dowdy said that Planning Staff would have to look into that because there have not been any conditional use permits issued for that street. Mr. Pilgrim said that they are not asking for them to pursue those people because that is not their purpose at this time. Mr. Pilgrim wanted to point out that the three people that are living in the house are not college students; they are all young adults with jobs. Mr. Pilgrim continued that if they are not granted the conditional use they will have to look for alternatives to the property. They would simply like some guidance and someone to interpret the part of the Ordinance that he did not understand. Chairman Krieb explained that the Board of Zoning Adjustments is there to listen to the cases that come before them, apply the standards that are in the Zoning Ordinance and make their decisions based on the findings that they hear in the meetings. The definitions are something that city attorneys and others would be involved in and not the Board of Zoning Adjustments. Mike Pitman agreed with Mr. Krieb. He then explained the process of the conditional use permit. If the applicant does not agree with the decision, he then has an opportunity to appeal that before a judge to rule on whether the decision made by the BZA was correct or not. Mr. Pitman explained in order to get an interpretation of a provision of the Ordinance, Mr. Pilgrim could speak with an attorney.

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

Mason and Wilma Billington of 1701 Parklane Drive, Murray were sworn in. Mrs. Billington said that they had bought the property across the street from the Pilgrims a couple of years ago for the purpose of renting. They currently have it rented to an elderly lady. Their tenant is very happy to be living in an R-2 neighborhood that is safe; however, with multi-family being the case across the street, the Billingtons are concerned with the noise, parking and activity. Mr. Billington said that most of the people on this street keep their yards looking nice. As people start parking in the yards, that is not a good community and that happens when you have multiple young people living in one house. He added that he has had young

people before and you have to stay after them. He concluded that it is not good to have that many living in one house. Mrs. Billington urged the board to enforce the Ordinance and deny the permit. Linda Scott commented that she drove down Woodlawn and noticed that a lot of the residents are making investments in their homes by making upgrades to them and it is looking very nice. *Andrew Pilgrim had to leave the meeting early to close his business.*

Stephanic Carpenter, 1656 College Terrace, Murray was sworn in. Ms. Carpenter said that she would like to echo what the Billington's had said. She said that those who live in R-2 would like to urge the board to keep it R-2.

Chairman Krieb asked if there was any rebuttal.

Mr. Pilgrim explained that the previous parking in the street was from meetings and not partying. His son Andrew is 29 years and is a young person. They are willing to pave the parking area and they have been doing some improvements to the property as well and will be willing to do anything that the board asks that will be observable from the outside. They have no intentions of turning the property into multi-family apartments. He concluded that if they could not get the conditional use permit, they are asking for a year to absorb the impact of the change.

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

Mary Anne Medlock said that she used to live in that neighborhood and it is unfortunate that the property owners were not informed correctly either by their friends or the realtor; however, she stressed that the property is located in an R-2 zone. Scott Seiber said that he thinks if the permit is denied that they should be given six months to bring the property into compliance. He said that he agrees that is an unfortunate situation, but every day there are unfortunate circumstances in life. Terry Strieter agreed with Mary Anne and Scott; however, he thought they should be allowed a little longer time than Mr. Seiber had recommended. He suggested a year as the Pilgrims had asked for.

Scott Seiber made a motion to deny the conditional use permit request for Robert Pilgrim to allow three non-related persons to occupy the premises at 208 Woodlawn Avenue but would give the people that live there, whom shall remain the same, until the end of August 2014 to get their affairs in order and bring the property into compliance. The fact that the young man is working very hard to establish his business and the more time that BZA can give him, the better off he will be in his business enterprise and he'll be able to make the transition at that time. Linda Scott seconded the motion and the motion carried with a 5-0 roll call vote. Terry Strieter and John Krieb abstained.

Questions and Comments: Mr. Crice announced that he had accepted a position in Forsythe County, Georgia which is near Atlanta. He expressed his gratitude to the board for their kindness and stated that he has enjoyed his time in Murray. Mr. Crice wished everyone a Merry Christmas. The board wished him well.

Adjournment: Josh Vernon made a motion to adjourn. Scott Seiber seconded the motion and the motion carried unanimously. The meeting adjourned at 7:35 p.m.

Chairman, Scott Seiber

Recording Secretary, Reta Gray

MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, DECEMBER 18, 2013
4:30 P.M.

The Murray Board of Zoning Adjustments met in regular session on Wednesday, December 18, 2013 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5th Street.

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

Board Members Absent: None

Also Present: Justin Crice, Candace Dowdy, David Roberts, Mike Pitman, Reta Gray, Hawkins Teague, Jennifer Tolley, DeAnn and Brad Barnett, Kevin Cunningham, Marsha Dorgan, Brandon Edmiston, Attorney Trevor Coleman, Rick Ellis, Robert and Andrew Pilgrim, Mason and Wilma Billington, Stephanie Carpenter and public audience

Chairman Krieb called the meeting to order and welcomed all guests and applicants. Chairman Krieb noted some minor changes to the minutes from November 20, 2013 regular meeting and asked if there were any additional changes, additions or deletions that needed to be made.

Terry Strieter made a motion to approve the BZA minutes from the November 20, 2013 regular meeting as amended. Josh Vernon seconded the motion and the motion carried unanimously.

Public Hearing: Conditional use permit request for two non-related persons to occupy the premises at 110 Hickory Drive — Claire Barnett: Candace Dowdy used a Power Point presentation to show the property at 110 Hickory Drive that is owned by Claire Barnett. The property is located in an R2 (Single Family Residential) zoning district and is surrounded by R-2 zoning to the north, east and west and Government zoning to the south. Ms. Dowdy explained that she had received an inquiry from an adjoining property owner as to how property could be used in an R-2 zoning district. At that time it was brought to staff's attention that the property at 110 Hickory Drive was possibly being occupied by two non-related persons. A letter was sent to Ms. Barnett stating that the property was possibly being used in violation of the R-2 zoning regulations. Upon receipt of the letter Brad and DeAnn Barnett, parents of Claire Barnett came into the office inquiring about the letter their daughter had received. They indicated that the property at 110 Hickory Drive had recently come on the market for sale and that they had helped Claire purchase the home but the deed to the property was in Claire's name. At the time she purchased the house she was living in an apartment on Stanford Drive with one other girl. When Claire and her friend moved into the house in August of this year she was not aware that she was in non-compliance with zoning regulations. The Barnetts informed Ms. Dowdy that Claire and her friend are seniors at Murray State and that they have three semesters remaining before they graduate (two semesters of class and one semester of student teaching). Claire's friend is from Eddyville, KY and she only resides with Claire during the months that school is in session and she goes home during Christmas, spring and summer breaks. She only pays rent for the months she is there. Claire Barnett is requesting permission from the board to allow her friend to reside on the premises with her until she graduates from Murray State. They have recently widened the driveway to accommodate the additional vehicle and plan to pave that area in the spring. Staff informed Mrs. Barnett that Claire would either have to bring the property into compliance or apply for a conditional use permit. Ms. Dowdy explained that all adjoining property owners were notified of the meeting. Planning Staff has not received any calls concerning this request either in favor or in opposition; nor have there been any complaints reported.

Murray Board of Zoning Adjustments 121 December 18, 2013

Chairman Krieb explained that he had asked Planning Staff to document the most recent previous conditional use permits that were related to the issue of non-related persons living in the R-1 and R-2 zones and what their outcome was. Mr. Crice compiled that list and of the last five conditional use permits since 2011, all five were denied. Each had a different circumstance and was granted a different time limit for bringing the property into compliance. Mr. Krieb opened the public hearing and asked if there was anyone that wished to speak in favor of the conditional use permit.

Brad and DeAnn Barnett of 2107 Southwest Drive, Murray were sworn in. The Barnetts felt that they created the situation by purchasing the house and allowing the two girls to live together. None of them were aware of the zoning regulations that prohibited non-related persons to live together in an R-2 zone. Mrs. Barnett stated that when the house came on the market, they thought it would be perfect for Claire. They made the decision to purchase the property mainly because of their situation. Brad has ALS and it was important to them to get Claire set up in a stable environment that Brad could be a part of. Shelby, Claire's roommate is from Eddyville as Ms. Dowdy stated earlier. Claire and Shelby shared an apartment before moving into the house on Hickory. Financially this has been a good financial situation for Shelby as she only pays rent during the months she is living in Murray. Mrs. Barnett said that they felt they had an obligation to Shelby when they bought the house to offer her the same arrangement that they did in the apartment. She continued that if the board would not permit the conditional use permit, they would like for them to consider letting Shelby live there until she finished school and her student teaching. Mrs. Barnett added that if Shelby decided to move out in the future, Claire did not want another roommate. She said that they had talked to the adjoining property owners and asked them to sign a paper stating that they did not have any objections with Shelby living there for three more semesters. Only one property owner was reluctant to sign because she was concerned with the additional traffic and in addition she had commented that she wouldn't sign anything unless her husband could look it over first. The Barnetts have spent over \$13,000.00 on the house since purchasing it by making repairs on the inside as well as the outside. Their intention is to improve the value of the property. Josh Vernon asked if the long term goal of the home is to be Claire's residence. The Barnetts answered, "Yes." Scott Seiber asked if they bought the home through the owner or through a realtor. Ms. Barnett replied that they bought it through a realtor and she did tell them that it was zoned R-2 single family, but they did not remember if she elaborated about that. This was a big step for the Barnetts and they did not know to ask questions about the zoning as they are residents of the county themselves and are not familiar with zoning. Mr. Seiber asked what date they would actually be graduating. The girls will be doing their student teaching starting in January of 2015 and graduate in May of that year. The Barnetts are asking for them to be able to reside together until Shelby finishes her student teaching (provided she is student teaching in Murray). Shelby may or may not be in Murray then because if she student teaches closer to Eddyville, she will live in Eddyville. Ms. Barnett continued that the rent money that is coming in is not that great, but it is more important to them to be able to help Shelby out. Terry Strieter asked if they planned on graveling or paving the additional driveway. They replied that they planned on concreting it, but because of the weather conditions, it would be spring before that would happen. The Barnetts concluded that Claire currently works part time with DeeAnn and she has intentions of remaining in the house after graduation. The facts that Claire is very close to her parents and that she also has a boyfriend here leaves them confident that she will remain in Murray.

Chairman Krieb asked if there was anyone that wished to come forward to speak in opposition to the request.

Kevin Cunningham, 111 Hickory Drive, Murray was sworn in. Mr. Cunningham stated that he and his wife had purchased their home in 2006 which is on the corner of Locust and Hickory. They enjoy their street and neighborhood. He said that there is not a lot of property movement on the street as far as sales and transactions. Mr. Cunningham actually grew up in the area and when their home became available, they thought it was naturally a place that they desired to live and raise a family. When they bought the

house they felt it was in a great location with a close proximity to campus. It was also located in an R-2 Single Family zoned area. They did not want to live in a multi-family environment where there were non-related people living together. Mr. Cunningham revealed that he was the neighbor that initially called the Planning Department requesting the information about R-2 zoning. He had noticed that two people who were not related were living across the street. Mr. Cunningham said that the place looks nice since the two girls moved in and has been kept well on the outside. Initially the weekend of MSU homecoming he noticed a lot of comings and goings during the late hours with taxi cab traffic. That situation aggravated him a little and that was initially why he had called Ms. Dowdy. Mr. Cunningham said that the Barnetts had stated that they knew the property was R-2 before purchasing it and it seemed to him since they were aware of that, they should be made to bring the property into compliance immediately. Mr. Cunningham is not a fan of conditional use permits and he thinks what the Barnetts are asking for is excessive. Mr. Cunningham continued that in addition to Shelby living with Claire, Claire's boyfriend is there on numerous occasions overnight. He doesn't know if he is actually living there or not, but out of the last 5 nights, he has been there all 5 nights. Mr. Cunningham said that he knew that the Barnetts were nice people and he didn't want to stir anything up, but he thinks that maybe their daughter is taking advantage of them. Mr. Seiber asked if the comings and goings happened frequently during the night or if the instance that Mr. Cunningham described was a onetime occurrence. Mr. Cunningham replied that it wasn't frequent, but it had happened more than once. Mr. Cunningham asked the board to decline the request for the conditional use permit and have them bring the property into compliance immediately.

Marsha Dorgan, 1622 Miller Avenue, Murray was sworn in. Ms. Dorgan stated that she also lives in an R-2 zoned area and has since 2001. Ms. Dorgan said that she knows that people are constantly applying for conditional use permits to allow them to live in R-2 zoned areas and she does not think that is right. Ms. Dorgan said that the only house in her neighborhood that has been changed from R-2 in the last 12 years has been condemned. She explained that some nearby residents had applied for conditional use permits and were denied; however, they continued to use the property as multi-family. She named the Bradley house as one of those in non-compliance. Ms. Dorgan said that she frequently calls the police to report loud noise coming from parties that are going on in her neighborhood. The no parking signs have disappeared from the streets and now cars are parking everywhere, making it impossible to drive down the street. Ms. Dorgan said that she has been coming to meetings and speaking up for years. She stated that the Barnetts seem like nice people, but there are rules and regulations in this town and they are not being abided by. Ms. Dorgan said that a lot of time is spent in making rules and she would like to see those rules enforced and Murray cleaned up.

Chairman Krieb asked the Barnetts if they had any rebuttal.

Mrs. Barnett came forward. She stated that they were aware that their daughter had a boyfriend and that he stayed over at her place on occasions; however, he has a residence of his own and does not reside there. Ms. Barnett said that as a neighbor, (she addressed Mr. Cunningham) the best way to deal with a problem is to talk with them. She said that they are nice people and they would be willing to try to work with him and try to resolve any issues that he has.

Chairman Krieb closed the public hearing and turned it over to the board for discussion. Mr. Krieb said that they are aware of what the history has been for conditional use permits as they viewed that information at the beginning of the meeting. All five were denied in the recent history. There are others that were pointed out by Ms. Dorgan that had been approved from an earlier time period. Josh Vernon asked Ms. Dowdy for the definition of a family. Ms. Dowdy referred him to the definition of a family as it is stated in the Zoning Ordinance. Ms. Dowdy said that they feel very comfortable with the wording of the Ordinance and she then read that particular section aloud. Ms. Dowdy stated that the interest is not in the ownership of the home, but the occupancy of the home. Mike Pitman commented that there was a case

several years ago that was litigated where the court upheld Murray's Ordinance regarding the family definition. He explained that he did not think that the Barnetts were arguing the fact of whether a family was living in house, but they were asking permission for Claire's friend Shelby to continue to live there. Mr. Strieter asked Ms. Dowdy if there was room for three automobiles if the side driveway is used. Ms. Dowdy replied that there is. Mr. Krieb asked if the extension of the driveway would violate any boundary issues. Ms. Dowdy replied that it would not since the Barnetts are well within their property lines. Ms. Dowdy continued that they do not have staff to control these areas on a daily basis; however, when there is a complaint made the Planning Staff does follow up on them. She added that when conditions are placed on a conditional use permit, the board can review it at any time and if found that the applicant is non-compliant they have the right to revoke that permit. Mr. Seiber said that he has served on this board for 21 years and this is the most difficult issue to deal with and that is the reason they are dealt with on a "case by case" basis. In recent years he feels that the board has taken a stronger look at these kinds of things because they are very sensitive to single family neighborhoods. At the same time, they try to be fair to all parties involved. He added that he disagreed with Mr. Cunningham in that a person should be granted a reasonable time to move if the board decided in that way. Mr. Vernon commented that from the signatures that had been received, he does not feel that Claire and her friend had been obnoxious neighbors and that outside of that one instance, there were no other complaints. He added that when his children have birthday parties, the driveway is full at his home and people are parked in the street. Linda Scott commented that if the permit was allowed, that could possibly open that area up to future conditional use permits which could affect the R-2 status of the neighborhood.

Josh Vernon made a motion to deny the conditional use permit request for Claire Barnett to allow two non-related persons to occupy the premises at 110 Hickory Drive. The property owner must bring the property into compliance by having Shelby Snow vacate the residence by the end of May 2014 on the findings that the long term goal for this neighborhood is not to set a precedence for allowing conditional use permits for multiple unrelated persons to live in a residence and that there has been opposition indicated to this request by neighbors. Terry Strieter seconded the motion and the motion carried with a 6-0 roll call vote. Bobbie Weatherly abstained from voting.

Public Hearing: Conditional use permit review for proposed residential planned development project at 807 & 809 Coldwater Road — Tung Dinh: Chairman Krieb explained that the request for a conditional use permit for the property at 807 & 809 Coldwater Road for Tung Dinh will not be heard at this time because the project was tabled at the Planning Commission meeting the previous night; therefore, it will not appear on the agenda until it is forwarded on from the Planning Commission.

Public Hearing: Request for parking space variance at 1415 Main Street — Corvette Lanes — Brandon Edmiston: Candace Dowdy used a Power Point presentation to show the property located at 1415 Main Street. Brandon Edmiston recently purchased the Corvette Lanes property. Mr. Edmiston is in the process of renovating the building inside and outside. He is proposing to renovate the 21,451 square foot building to continue the operation of the bowling alley as well as a 239 seat restaurant with both party and arcade rooms. (The bowling alley will be approximately 10,500 square feet leaving 10,951 square feet for the restaurant.) Mr. Edmiston's attorney, Trevor Coleman has indicated that the type of business that he plans to open is very similar to a Dave and Buster's Restaurant. The property is located in a B-1 Neighborhood Business District and is surrounded by B-1 zoning in all directions with Government property (Murray State University) adjacent to the northeast. The most recent use of the building was for the bowling alley, two retail spaces and one upstairs apartment occupied by the managers of the property. A large portion of the upstairs has been used for storage purposes for several years. The existing property has 59 parking spaces. Since Mr. Edmiston is proposing to use a large portion of the building for a restaurant that seats over 100 people they are required to obtain a building

Murray Board of Zoning Adjustments 124 December 18, 2013

permit and bring the building up to current fire and building codes. Based on all the uses of the building they would be required to have a minimum of 178 parking spaces. The bowling alley is proposing to have 18 lanes with requirements of five parking spaces per lane. The restaurant would be required to have a minimum of 88 spaces based on the seating capacity. If the parking was calculated on gross floor area they would be required to have a minimum of 110 spaces. With portions of the building serving a dual purpose for the restaurant and the bowling alley, Planning Staff felt like the requirements could be considered on the seating capacity instead of the gross floor area. Based on this information they will be seeking a 120 parking space variance. Ms. Dowdy continued that since the parking requirements have not been updated in several years, Planning Staff sometimes uses a Parking Standards book that gives average parking requirements for different cities around the United States for a particular use for comparison. Ms. Dowdy said that when Mr. Dinh had purchased the former "Owen Grocery" building, he was required to have additional parking for his proposed restaurant. Mr. Dinh chose to purchase additional property to provide some of that parking and in the end only had to request a 15 parking space variance. Mr. Coleman has indicated to Planning Staff that his client is looking at potential properties within the area that could provide additional parking for the restaurant and bowling alley. Ms. Dowdy showed a new proposed floor plan for both the first and second floors. The outside of the building will be totally renovated. Ms. Dowdy stated that the size of the building will not be altered; however, since the use of the building is changing it was necessary to bring this item before the board. Mr. Strieter asked if they knew what the hours of operation would be for the restaurant since that would impact using the spaces of surrounding businesses. Mr. Vernon asked if they were proposing a rear entrance to the building. Ms. Dowdy replied that they would have a rear entrance and there will also be enclosed stairwells leading to the second floor on both ends of the building and one of them will lead to the back parking lot. (The Fire Marshal has looked at these and approved them.) Ms. Weatherly asked if the businesses to the east would be willing to share parking spaces. Ms. Dowdy said that she had spoken to Matt Bartholomy and he indicated that he is very limited on his parking; however, Ms. Dowdy thinks that those businesses currently try to work together on their parking situation by sharing spaces. Main Street Pizza closes around 8:00 p.m. and is not opened on Sunday so those spaces would be available after 8:00 and on Sundays. Mr. Dinh has a parking variance for his restaurant; therefore, he has to maintain his parking. Ms. Dowdy stated that she had counted the parking spaces around the Lutheran Church and there are approximately 90 parking spaces in the rear that could possibly be shared space when the church was not meeting. Even though she is not sure what the hours of operation will be for Mr. Edmiston's business, she anticipates that with the other businesses and church having peak hours differently than Mr. Edmiston's business, there should be an acceptable amount of parking available. Murray State students will have the campus parking available to them and the bowling alley will be within walking distance for many.

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

Trevor Coleman, 408 Main Street, Murray and Brandon Edmiston, 2384 US Hwy 641 South were sworn in. (Mr. Coleman is representative for Edmiston Retail Division and Brandon Edmiston, who recently purchased the property.) Attorney Coleman stated that Mr. Edmiston is in the process of renovating both the inside and outside of the building. *(A rendering of the outside of the building was shown and presented as Exhibit A.) They are attempting to replace an eyesore with a much more appealing facade and at the same time preserve "old Murray" while bringing it into the present. The inside of the building has been gutted and there are building permits to be submitted based on the outcome of the BZA meeting. Mr. Edmiston has now purchased the two tracts of land located at the back of the bowling alley. It hasn't been decided what they will be used for at this time. There is a garage on one of the tracts that could be used to store bowling equipment and supplies or the property could be used for additional parking. Mr. Coleman stated that they are quite a bit short on the required parking spaces but by sharing the church's spaces, they feel this will resolve that issue. There is an abundance of parking available behind the*

Murray Board of Zoning Adjustments 125 December 18, 2013

church and the church's hours will be entirely different from this proposed business. Sunday morning and Sunday nights will be the church's big times and the restaurant will not be opened at all on Sunday. Mr. Coleman clarified that they are estimating that their peak times of operation will be from around 4:00 p.m. until midnight. Liquor will be available. Mr. Coleman stated that they were able to approach Emanuel Lutheran Church and sign a reciprocal agreement with them that says they are granted the right to use their parking lot. (A copy of this agreement was presented as Exhibit B.) Mr. Coleman said that he has lived in Murray all his life and has never seen the bowling alley lot full but it is their hope that it will be full after this is over. The Cycle Shop and The Coffee Shop owned by Andy and Joe Gupton are adjacent to this property and they have also signed a reciprocal agreement. This agreement may not prove beneficial as those businesses only have a limited amount of parking spaces available. The Cycle Shop closes about the time that the bowling alley would be having their peak time so their 10 spaces wouldn't be available until that time. Murray State is another possible scenario that can be used. Mr. Coleman contacted John Rall, the attorney for MSU, by letter at the end of November and asked if MSU would be willing to enter into a similar agreement that they have with the church and the Guptons. Mr. Coleman stated that they would be prepared to offer MSU some type of student discounts. Mr. Rall replied that he would tender it to the board. The MSU board should be meeting the following night to vote on this; so hopefully he can get some type of reciprocal agreement with them as well. At one time MSU had a bowling league; however, there are no bowling lanes available on campus for practice. Mr. Coleman said that they feel that the requirement of 178 spaces is a bit unrealistic; however, they think with the reciprocal agreements, they will come close to that requirement. The bowling alley and the restaurant should work hand-in-hand. The restaurant will be along the lines of a Rafferty's and the bowling alley will be a nice facility for the kids to go to. Mr. Coleman stated that if the board had questions concerning the building Mr. Edmiston and his Chief Operating Officer, Rick Ellis could answer those questions. Mr. Vernon asked how the customer would know where they could park. Mr. Coleman explained that the church and the bowling alley have shared parking lots for years. They do plan on posting signs that say that the bowling alley parking lot can be used at certain hours for church parking and the church parking will be available for bowling alley/restaurant parking during certain hours. Mr. Seiber asked how many spaces would be available with the reciprocal agreements. Mr. Coleman replied that with the agreements (excluding Murray State) and the two new tracts (which would provide 6-10 additional spaces) and the number that they have now, he thinks they will be close to the requirement. Ms. Dowdy explained by calculating the 90 spaces from the church and the 59 spaces they currently have, that puts the total parking up to 149 which will leave a variance of 30 spaces.

Mr. Coleman stated that this set up will be similar to a Dave & Buster's and described them as a very nice restaurant where you can order a steak with current locations in Nashville, Atlanta and Cincinnati. Dave & Buster's facilities are actually located side by side to the bowling alleys where you can get a beer and hot dog from a hot grill. There are also games and of course bowling in this facility. Mr. Edmiston stated that the restaurant will only be opened for dinner which will coincide nicely with Murray State hours as well as the church activities. Mr. Coleman revealed that the total dollars involved with this renovation will be around 1.4 or 1.5 million dollars. It will be a building with old time charm as well as a "draw" that Murray will be proud of. Mr. Coleman said not to discount the fact that they are keeping the original building. It would have been much less expensive to demolish it and start all over; however, he said the value of restoring something to its 1950's or 1960's version is fairly lucrative. Mr. Edmiston stated that the building was once the Collegiate Restaurant and the rendering is very similar to the original building. They have plans to tear the brick off the front of the building and replace it with the 50,000 bricks that they secured from the gates that were used to the entrances of Murray State. Mr. Edmiston stated that they had actually tried to pressure wash the front of the building with no avail. After living in several different places all over the country, he decided to come back to Murray with his wife, 3 children and another one on the way. Mr. Edmiston said that when he purchased the property he had no idea what he would do with it. The biggest complaint that he has heard has been that there is nothing for kids to do in Murray. They kept the bowling alley opened for about a month after they purchased the property and during that time

Murray Board of Zoning Adjustments 126 December 18, 2013

his kids learned to bowl. He did not think his kids would like it if he tore it down; thus, the decision to revamp the bowling alley. He said that there are so many people in the community that this project will impact involving so many different age groups. It is rare that you see this type of recreation in any city and he hopes everyone comes out and supports them. Josh Vernon was very complimentary of this proposal. He thinks that it is much needed in the community and he likes to see it happening. He added that he personally thinks that the parking will work itself out. Mr. Vernon said that he would like to see the current seven parking spaces in the front of the business removed where the front could be left open for pedestrian traffic. This would prevent vehicles from backing out in the street (which is quite dangerous). Mr. Edmiston explained that Matt B's building is actually closer to the street and the parking in front of his building is dangerous as well. Some of the other board members suggested that the parking in the front be eliminated and green space provided in that area. Handicap parking was discussed. Mr. Edmiston stated that all the handicap accessibility will probably be located at the front of the building because the building is level to the ground on that side of the building. Ms. Dowdy commented that they would probably be required to provide six or seven spaces for handicap. Once the old concrete is busted up in the front of his building, Mr. Edmiston thinks it will be nice to have some striped parking spaces available in the front; however, he does think that most everyone will prefer to park in the back.

The main entrance will be in the back of the building. Double glass doors have replaced the single door in the back and the width of the hallway has been doubled. Mr. Edmiston said that they do not have a rendering of the back of the building, but it will look almost as good as the front. Mr. Edmiston continued that there were previously several small retail businesses along the front of the building that have been done away with. Since purchasing the two small tracts in back of the building, they are open to buying any other property that could be used to increase the parking. They are looking at reconfiguring the layout to utilize this space efficiently. Mr. Edmiston then addressed the square footage of the upstairs. He brought up the fact that the square footage for the upstairs was not 11,000 square feet as Ms. Dowdy had stated earlier. The square footage of the restaurant (which is 80 feet x 45 feet) totals 3600 square feet and with the kitchen area added in, it's around 5,000 square feet. Ms. Dowdy stated that Barry Morris at Ace Design had given her those numbers.

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

Scott Seiber said that he thought that the reciprocal agreements that they have come up have almost resolved the parking issue. Mr. Pitman advised the board to go ahead with some sort of motion even though they do have the reciprocal agreements in order to set parameters for the property. Ms. Dowdy indicated that she had spoken to Mr. Coleman about the parking across the street at the Gupton's property and informed him that there were also residential apartments upstairs from the restaurant and bike store which required at least eight parking spaces; therefore, she did not think they should rely on that space for their overflow. Leaving the Gupton property off will leave them with a need for at least a 29 space variance.

Scott Seiber made a motion to approve a 40 parking space variance for the property at 1415 Main Street based on the proposed use of a restaurant and bowling alley as presented. Any expansion of the use of the building requiring additional parking will need to be revisited by the Board of Zoning Adjustments at that time. It should be noted that reciprocal agreements have been reached with several property owners in the immediate area that will help alleviate the need for additional parking spaces. 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 the motion and the motion carried with a 7-0 voice roll call vote. *At 6:40 Chairman Krieb declared a 5 minute recess. The meeting resumed at 6:45 p.m.*

Public Hearing: Conditional use permit request to allow three non-related persons to occupy the premises at 208 Woodlawn Avenue — Andrew & Robert Pilgrim: Justin Crice used a Power Point presentation to show the property at 208 Woodlawn Avenue. Robert Pilgrim purchased the property in July of this year and currently Andrew Pilgrim and two friends live in the house. This property is located in an R-2 (single family residential) zoning district with R-2 zoning surrounding it in all directions. After receiving a complaint for possible non-compliance on the use of the property and parking on the street from a neighbor, Planning Staff followed up with a letter to the property owner. Robert Pilgrim responded to the letter and was informed of the zoning violation. He was also informed that he would either need to bring the property into compliance or apply for a conditional use permit. Mr. Pilgrim did not think there were any issues with multiple people residing in an R-2 zoning district as long as one of the residents was the owner of the property as his son Andrew is. After speaking with Mr. Pilgrim staff made a site inspection of the property and found one car in the driveway and two cars parked along the street on each side of the driveway. Mr. Crice showed aerial shots of the property and surrounding properties noting that there are some properties where the property owners installed gravel or paved areas close to the street for extra parking. These areas were constructed without the city's approval. Mr. Crice clarified that this is not the situation at 208 Woodlawn and there is not anywhere for additional parking at this site. Ms. Dowdy asked Mr. Roberts for an update on the new parking standards that are being looked at by the city. Mr. Roberts explained that the new parking standards will probably prohibit a lot of on street parking. This item is going through review by the City Council at this time. He continued that he did not know all the specifics of the document; however, it is rather lengthy. Mr. Roberts concluded that using the street for future parking should not be counted on. Ms. Dowdy stated that there are several streets in town where parking is allowed on one side of the street and there are issues. She explained that even in multi-family housing Planning Staff tries to make sure that there is ample space to accommodate parking for vehicles without using the street. Some of the older streets are not as wide as the newer ones and when vehicles don't park close enough to the curb, there isn't a lot of width for other traffic on the street. Ms. Dowdy was not sure where the property lines were for this particular property; therefore, it would be difficult to say if the driveway could be widened. Chairman Krieb referred back to the history of the five conditional use permit requests that were reviewed in the last two years as well as the one that was heard earlier in the meeting. The results of the requests were that all six were denied. All were provided with what the board thought was a reasonable time period to bring the property into compliance with the zoning requirements.

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

Robert Pilgrim, 1216 Wilkins Road, Benton and Andrew Pilgrim of 208 Woodlawn Avenue, Murray were sworn in. Robert Pilgrim stated that they are asking for conditional use of a property. Mr. Pilgrim indicated that he had spoken to Ms. Dowdy and asked for her interpretation of the ordinance and she said that she would not give an interpretation and that only the Board of Zoning could do that. Mr. Pilgrim said that they would also like a full definition of family. He then stated that they do not feel like letting Andrew live in the home with two non-related persons is applicable because they are not asking for anything that would affect the public health or safety. Also, by allowing Andrew to do that would not in any way impair the integrity of the district in which the property is located. They are asking for a conditional use, but stating for public record that they do not understand how this is applicable to them. They are willing to comply with any reasonable directives in modifying the parking right-of-way or limit the number of vehicles by riding bikes or parking their vehicles at Andrew's place of business (which is Gigabytes Cafe). They are also willing to make any other reasonable modifications to the property or residence and comply with any proximity property lines. When they purchased the property there was

Murray Board of Zoning Adjustments 128 December 18, 2013

already a graveled area for parking that was outlined with landscape timbers. They moved the timbers when they were trying to clean the place up a little after moving in, but they can turn that area back into a driveway and pave it if necessary. Mr. Pilgrim said that there will be more than enough room for two cars to park side by side. Mr. Pilgrim explained that the reason there were cars parked in the street for several weeks during October and November was that Andrew has been conducting business meetings at his home for his business, Gigabytes Café and Deli. Mr. Pilgrim added that they did not realize that it was against the rules to park on the street. That is no longer an issue because those meetings are over now. Mr. Pilgrim stated that the person that voiced the original complaint (John Nolin) said that they do not have a problem with the boys living there together; their concern was about the additional cars which were there during the meetings. Mr. Nolin did not want to be criticized by the BZA for contradicting himself so he decided not to sign their petition supporting them in the conditional use. Mr. Nolin also indicated that he would not be attending the meeting. Mr. Pilgrim then presented the petition that all the other neighbors had signed. *(The petition was entered as Exhibit A.) When Andrew moved into the home it was close to his business and he decided to share expenses with two of his friends to make to possible for him to live there. If Andrew has to cover all the expenses himself while trying to get his new business up and running, he will probably have to find another place to live and they'll have to do something else with the property. They are asking for an unlimited but non-extendable transferable conditional use permit so that Andrew can stay in the house with two friends who are non-related. If the conditional use is not allowed, they are asking that the board give Andrew one year before the others have to move out so that he will have ample time to make his business profitable. Mr. Pilgrim stated that the property was purchased with the purpose that Andrew would be one of the persons living there. They thought that as long as the three people living in the house were sharing expenses and responsibilities of upkeep where one of those persons was the owner that should not be an issue. Mr. Pilgrim continued that in 2005 a conditional use was granted to one property in the vicinity to allow a college student to continue to live at a home with non-related persons for his four years of college at MSU. Mr. Pilgrim continued that there are other properties on the street that are "grandfathered in" multi-family dwellings; a quadraplex on Woodlawn, as well as the house north of the Pilgrim's with an apartment up above it. Ms. Dowdy said that Planning Staff would have to look into that because there have not been any conditional use permits issued for that street. Mr. Pilgrim said that they are not asking for them to pursue those people because that is not their purpose at this time. Mr. Pilgrim wanted to point out that the three people that are living in the house are not college students; they are all young adults with jobs. Mr. Pilgrim continued that if they are not granted the conditional use they will have to look for alternatives to the property. They would simply like some guidance and someone to interpret the part of the Ordinance that he did not understand. Chairman Krieb explained that the Board of Zoning Adjustments is there to listen to the cases that come before them, apply the standards that are in the Zoning Ordinance and make their decisions based on the findings that they hear in the meetings. The definitions are something that city attorneys and others would be involved in and not the Board of Zoning Adjustments. Mike Pitman agreed with Mr. Krieb. He then explained the process of the conditional use permit. If the applicant does not agree with the decision, he then has an opportunity to appeal that before a judge to rule on whether the decision made by the BZA was correct or not. Mr. Pitman explained in order to get an interpretation of a provision of the Ordinance, Mr. Pilgrim could speak with an attorney.*

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

Mason and Wilma Billington of 1701 Parklane Drive, Murray were sworn in. Mrs. Billington said that they had bought the property across the street from the Pilgrims a couple of years ago for the purpose of renting. They currently have it rented to an elderly lady. Their tenant is very happy to be living in an R-2 neighborhood that is safe; however, with multi-family being the case across the street, the Billingtons are concerned with the noise, parking and activity. Mr. Billington said that most of the people on this street keep their yards looking nice. As people start parking in the yards, that is not a good community and that happens when you have multiple young people living in one house. He added that he has had young

Murray Board of Zoning Adjustments 129 December 18, 2013

people before and you have to stay after them. He concluded that it is not good to have that many living in one house. Mrs. Billington urged the board to enforce the Ordinance and deny the permit. Linda Scott commented that she drove down Woodlawn and noticed that a lot of the residents are making investments in their homes by making upgrades to them and it is looking very nice. *Andrew Pilgrim had to leave the meeting early to close his business.*

Stephanie Carpenter, 1656 College Terrace, Murray was sworn in. Ms. Carpenter said that she would like to echo what the Billington's had said. She said that those who live in R-2 would like to urge the board to keep it R-2.

Chairman Krieb asked if there was any rebuttal.

Mr. Pilgrim explained that the previous parking in the street was from meetings and not partying. His son Andrew is 29 years and is a young person. They are willing to pave the parking area and they have been doing some improvements to the property as well and will be willing to do anything that the board asks that will be observable from the outside. They have no intentions of turning the property into multifamily apartments. He concluded that if they could not get the conditional use permit, they are asking for a year to absorb the impact of the change.

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

Mary Anne Medlock said that she used to live in that neighborhood and it is unfortunate that the property owners were not informed correctly either by their friends or the realtor, however, she stressed that the property is located in an R-2 zone. Scott Seiber said that he thinks if the permit is denied that they should be given six months to bring the property into compliance. He said that he agrees that is an unfortunate situation, but every day there are unfortunate circumstances in life. Terry Strieter agreed with Mary Anne and Scott; however, he thought they should be allowed a little longer time than Mr. Seiber had recommended. He suggested a year as the Pilgrims had asked for.

Scott Seiber made a motion to deny the conditional use permit request for Robert Pilgrim to allow three non-related persons to occupy the premises at 208 Woodlawn Avenue but would give the people that live there, whom shall remain the same, until the end of August 2014 to get their affairs in order and bring the property into compliance. The fact that the young man is working very hard to establish his business and the more time that BZA can give him, the better off he will be in his business enterprise and he'll be able to make the transition at that time. Linda Scott seconded the motion and the motion carried with a 5-0 roll call vote. *Terry Strieter and John Krieb abstained*

Questions and Comments: Mr. Crice announced that he had accepted a position in Forsythe County, Georgia which is near Atlanta. He expressed his gratitude to the board for their kindness and stated that he has enjoyed his time in Murray. Mr. Crice wished everyone a Merry Christmas. The board wished him well.

Adjournment: Josh Vernon made a motion to adjourn. Scott Seiber seconded the motion and the motion carried unanimously. *The meeting adjourned at 7:35 p.m.*

Chairman, Scott Seiber

Recording Secretary, Reta Gray