

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, AUGUST 20, 2014
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, August 20, 2014 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, Scott Seiber, Terry Stricter, Bobbie Weatherly and Josh Vernon

Board Members Absent: None

Also Present: Candace Dowdy, Robert Jeffries, Reta Gray, Attorney David Perlow, Hawkins Teague, Officer Tim Fortner, Robert Pilgrim, John Gream, Bill Adams, Janice Hicks, Marsha Dorgan, Alisha Parker, Jennifer Parker, Austin Parker and public audience

Chairman Krieb called the meeting to order and welcomed all guests and applicants. Chairman Krieb asked if there were any changes to the minutes from August 5, 2014 special-called meeting.

Scott Seiber made a motion to approve the BZA minutes from the August 5, 2014 special-called meeting as presented. Terry Stricter seconded the motion and the motion carried unanimously.

Public Hearing: Dimensional Variance request for additional wall signage on south side of building (facing Main Street) at 104 North 15th Street –Gigabites Café: Robert Jeffries used a Power Point presentation to show the Gigabites Café that is located at 104 N. 15th Street. They currently have a sign on the front of their business (west side) and have found that it is not as visible as they would like; therefore, they are requesting an additional wall sign to be displayed on the south wall of the building facing Main Street. Their building is shared with Gear Up Cycles, who occupies the other half of the building and is currently displaying a wall sign on the south wall facing Main Street. This building is a two story building with the two businesses being located on the lower level and residential apartments on the upper level. If approved, Gigabites Café feels that the proposed wall sign will improve their visibility and help direct the traffic from Main Street to their business located on North 15th Street. The new sign has been designed to the same height as the Gear Up Cycle sign and will be internally illuminated. The dimensions of the proposed sign will be 4'x10'. Mr. Jeffries showed the rendering of the proposed sign. He stated that the square footage of the south wall is 2,520 square feet. Both the signs at Gear Up Cycle and the proposed one for Gigabites Café together total 64 square feet; which is well below the allotted 126 square feet. Mary Anne Medlock asked if there was any chance that the existing freestanding sign could be shared by Gear Up Cycle and Gigabites Café. Ms. Dowdy replied that that wouldn't be too practical since only one side of the sign could be seen at a time. She explained that the freestanding sign is a pre-existing non-conforming sign and it should have been removed years ago when the former business left that site. Since the sign remained, the property owner allowed Gear Up Cycle to use the sign when they moved in and add their logo on both sides. If the sign should ever be re-done in the future, any new sign would have to comply with the restrictions of being 10 feet off the side and front property lines.

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

Robert Pilgrim, 1216 Wilkins Road, Benton, Kentucky was sworn in. Mr. Pilgrim stated that his son and wife are owners of Gigabites Café. He explained that the sign will be internally lit with a sensor that turns the sign on at night. He continued that part of the parking lot to the south of the building is

designated for Gigabites' use, so they think that the proposed sign will help people know that they can park there to get to the store.

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

Mary Anne Medlock make a motion to approve the dimensional variance request to allow Gigabites Café to have one additional wall sign not to exceed 40 square feet in size to be displayed on the south side of the building facing Main Street as there are limited areas where they can have additional signage for good visibility. The sign should be in line with the Gear Up Cycle sign. 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. Scott Seiber seconded the motion and the motion carried with a 6-0 roll call vote. Terry Strieter abstained from voting.

Public Hearing: Request for conditional use permit to allow two non-related persons to occupy the premises in an R-2 zoning district – 1634 Olive Street – John Gream: Candace Dowdy used a Power Point presentation to show the property at 1634 Olive Street. She stated that approximately a month ago the Planning Department received a call from a concerned neighbor regarding the property possibly being used as a multi-family dwelling. The Planning Department sent a letter to Mr. John Gream inquiring as to how the property was being used. Mr. Gream responded by saying that he and his wife purchased the property in May of this year with the intentions of providing a home for their daughter as she attends Murray State University. He indicated that their daughter does not feel safe living there alone and would like to have a friend live with her. Staff informed Mr. Gream that this property was located in an R-2 zoning district and that it could only be used for single family purposes unless he applied for a conditional use permit to see if the board would consider allowing one non-related person to occupy the premises with his daughter. They are asking for a conditional use permit for the duration of their daughter's education at Murray State University with the following restrictions:

- Temporary permit not to exceed three years
- Quiet time at 10 p.m.
- No parking on the street
- Cleanliness of the property will be maintained at all times

Mr. and Mrs. Gream are open to any additional restrictions that the board may feel are necessary. Ms. Dowdy added that all adjoining property owners were notified. One letter was received from an adjacent property owner stating that they had no opposition to the request. That particular property owner does not reside at the property; it is being rented. (*Ms. Dowdy passed the letter around for the board members to review and it was then entered as Exhibit A.*) Ms. Dowdy continued that Planning Staff had put together a list of the most recent requests (since 2011) for conditional use permits of this nature for the board's viewing. The list shows the nature and address of the requests and the decisions that were made by the board. The list also showed the amount of time that the applicants were allowed to bring the property into compliance if their requests had been denied. Chairman Krieb added that the longest time that had been allowed for those applicants to bring the property into compliance was 18 months. Mr. Seiber asked if there are other properties being used as multi-family in the neighborhood. Ms. Dowdy said that Planning Staff has no way of knowing that unless there is a complaint made by a neighbor and at that time they typically notify the property owner to inquire how the property is being used. By looking at the property

owner's list, they are alerted that this might be happening if the property owner's mailing address is different from the actual property.

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

John Gream, 222 Golf Cart, Mayfield, Kentucky was sworn in. Mr. Gream explained that the property was not purchased to be an investment property; he stated that it was bought for the sole purpose of providing a residence for his daughter Jessie to live in while she works towards completing her studies at MSU. Ms. Gream is currently a junior and studying nursing with plans to complete a Master's Degree after she graduates. Her long term plan is to live and work in Murray; but if this plan should change, Mr. Gream stated that the house would be sold. He said that his daughter and her friend Cassie have resided in the home for one week now and they would like permission to continue to live there together. Cassie is currently a senior and has not decided if she will pursue a Master's or not. There is no rent being collected; however, they are splitting the utilities. The property was robbed during the remodeling procedure which made Jessie leery of living alone. Mr. Gream has considered having a burglar system installed. One gentleman has since been arrested in connection to the robbery. Mr. Gream continued that Jessie has met a lot of her neighbors including Ms. Adams who lives next door. All of the neighbors that he has spoken to seemed to be in favor of the two girls living there. He said that there had been a number of cars in the yard while the house was being renovated on the inside. He stated that the swimming pool had also been repaired and they are continuing to make improvements on the outside. Depending on the outcome of the meeting, Mr. Gream said that would determine how much additional work (such as replacing the siding and roof) that he would do. The garage had been closed in and Mr. Gream said that his intention is to open that back up as a garage. Ms. Medlock asked Mr. Gream if his realtor had explained to him that the property was in an R-2 zone. Mr. Gream replied that it was explained that the zone was R-2; however, he really didn't understand what R-2 was in Murray. He said that R-2 meant something different in Mayfield where they reside and it was his own fault for not looking up what R-2 meant according to the Murray Zoning Ordinance. The property has a driveway wide enough to accommodate two cars. Ms. Dowdy then showed pictures that were taken earlier in the day of the driveway with Jessie's and Cassie's automobiles parked in it along with an additional Mustang. Mr. Seiber explained that the board hears each request individually and makes their decision based on each situation; however, in the most recent past they have denied requests of this nature in order to preserve the value of the R-2 neighborhood. Mr. Gream said that that it is not his intent to change the integrity of the neighborhood as he has an investment in it and that his daughter will be living there. Ms. Dowdy clarified that the board is not concerned with whether the tenants pay rent or not; however, the occupancy of the house is what they are concerned with that actually violates the R-2 zoning ordinance. She added that they also understand that people are going to occasionally have overnight guests and that is acceptable. Mr. Gream said that his intention for mentioning that no rent was paid was to show they did not buy the property to make money off of it but to simply provide a home for their daughter.

Bill Adams, 1506 Hermitage, Murray was sworn in. Mr. Adams stated that he was there to speak on behalf of his mother, Ms. Lorene Adams who is the neighbor that Mr. Gream spoke of earlier. Ms. Adams has lived at this address for 59 years. She is 94 years old and is proud that the two girls have moved in. She has met the girls as well as Mr. Gream and she likes them all. She appreciates the work that has been done to the property thus far. The house has been vacant and in tremendous disrepair for approximately 18 months and since Mr. Gream purchased the property he had made numerous improvements to both the inside and outside. Ms. Adams is especially proud that one of the girls is a nurse. Mr. Adams has served on both the Planning Commission and City Council for numerous years and he understands the concerns of this type of request and the issues that it could present. He explained that

the board has the opportunity to review this conditional use in a year if it is granted and he encouraged the board to grant the conditional use on behalf of his mother.

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

The following people came forward individually: Janice Hicks, Marsha Dorgan, Alisha Parker, and Jennifer Parker. As these neighbors are proud that the city has recently hired a code enforcement officer, they are hopeful that a lot of their issues will be alleviated; however, they still had the following concerns:

- The ability of the realtors to adequately explain R-2 zoning to potential buyers
- The encroachment into R-2 zoning
- On the street parking in “no parking zones”
- The integrity of the neighborhood and the decrease in property values
- Property and yard maintenance issues
- Partying and people out in the street since there are no sidewalks
- Non-compliance of current residents
- Additional traffic coming in and out of driveway affecting adjacent neighbors
- Exceptions made through conditional use could change the neighborhood future zoning
- Young adults do not always comply with rules and regulations when living independently

Ms. Hicks would like to see the board stop the use of conditional use permits and think about the renewal/revitalization of the areas in close proximity to MSU that are zoned R-2. Ms. Alisha Parker, who is a realtor in Murray, said that the multiple listing for the property stated three different times that the property was R-2 zoned. (*A copy of the multiple listing was entered as Exhibit B.*) Ms. Jennifer Parker stated that a gentleman had been staying overnight and he drove the Mustang that was shown in the previous pictures.

Linda Cherry, 1537 Spring Creek Drive, Murray was sworn in. Ms. Cherry serves on the City Council and she came forward to ask for some clarification on the conditional use procedure. Ms. Dowdy explained the process. Then Ms. Cherry asked if Mr. Gream had purchased the house through a local realtor. Mr. Gream replied that he had purchased it through MTG in Mayfield. Ms. Cherry asked what would happen if the conditional use permit was granted and after sometime the occupants became non-compliant. Ms. Dowdy explained that the conditional use permit can be reviewed within a year (or at any other time period that the board feels appropriate). At that time, if Planning Staff has not received any complaints from the adjoining property owners, the property owner is contacted to see if the property is in compliance. If complaints are received by Planning Staff at any time and the applicant is found to be non-compliant, the chairman of the board is notified about this. If the property owner does not bring the property back into compliance immediately, Planning Staff has the right to bring the item back before the board for immediate review. Ms. Dowdy explained that the Zoning Ordinance and zoning maps are located on the city’s website for anyone that has questions about a particular piece of property.

Ms. Dowdy stated that at the previous City Council meeting when the new code enforcement officer, Tim Fortner was introduced, the Council directed the Planning Department to send a letter to the Murray realtors making them aware of the R-2 zoning regulations. Ms. Dowdy stated that she had contacted Kathy Kopperud, President of the Murray Board of Realtors and asked her to pass along this information at their next meeting. Ms. Dowdy also stated that she had sent a letter to the other realtors in Murray that is not a part of the Murray Board of Realtors explaining the R-2 zoning regulations.

Chairman Krieb asked if there was any rebuttal. *Scott Seiber left the meeting at 6:00 p.m.*

Mr. Gream came forward. He stated that his daughter had only moved in that week, but had spent a few nights during sorority recruitment week at the house. He really loves the neighborhood and is open to reviewing the conditional use permit at any time as he would like to see this work. Ms. Medlock asked what prompted the other young lady to move in with his daughter. Mr. Gream replied that it was always his intention to allow his daughter's friend to live there with her. He stated again that he was aware that the property was R-2 when he purchased it, but he would have never imagined that his daughter would not be able to allow her friend to live there with her. He said that he had other properties and he has never seen a restriction like this one. Mr. Gream said that he has made improvements to the property and has intentions to making more in the future. He wants to make this house a home and he thinks that the current conditions are better than the option of him just renting the property to a single family.

Austin Parker, 1631 Olive, Murray was sworn in. Mr. Parker said that he is concerned that whatever ruling the board should choose, it will set the precedence for the neighborhood and future rulings. They would like to keep the neighborhood as single family residential.

Chairman Krieb closed the public hearing. He explained that all of the similar requests that have made in the previous three years have been denied by the board; however, every case that the board deals with should be decided on its own merits. He then turned the item over to the board for discussion and a motion.

Josh Vernon commented that the long term proposed use for the property indicates the intent for this property to be a single family residence and that this is only a temporary situation. The evidence has been shown by the intent to take care of the property. The exterior of the space had improved over the previous 18 months since the ownership of the property has changed. Bobbie Weatherly stated that this type situation seemed to be an on-going dilemma in our community. She continued that it is everyone in the community's responsibility to enforce the Zoning Ordinance. She stated that if you want to have your son or daughter feel safe, then maybe they would feel safer in a dorm. Terry Strieter said that Murray has had this problem for a long time. If the issue of Jessie being afraid to live there alone requires her to have a girlfriend live with her, then maybe a good security system would satisfy that. Mary Anne Medlock said that she often wonders whether we are educating potential property owners enough before they buy into our communities. There are Zoning Ordinances that must be upheld. The misunderstanding of what R-2 means in this community is unfortunate. She said that the Planning Commission reviewed this area a few years ago and had thought about changing the area to R-4 (since that is what it is being used as primarily); however, they decided to leave it as R-2. She said that sends a strong message in itself. Linda Scott added that the revitalization of some of these communities is very important. There are homeowners that have invested a lot of time and money in their properties as R-2 properties and she feels like their investments need to be honored.

Linda Scott made a motion to deny the conditional use permit to allow two non-related persons to occupy the premises in an R-2 zoning district located at 1634 Olive Street. The property should be brought into compliance by December 31, 2014. Mary Anne Medlock seconded the motion and the motion carried with a 5-1 roll call vote. Josh Vernon voted no.

Questions and Comments: None

Adjournment: Mary Anne Medlock made a motion to adjourn. Linda Scott seconded the motion and the motion carried unanimously. *The meeting adjourned at 6:15 p.m.*

Chairman, John Krieb

Recording Secretary, Reta Gray

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>* >* Temporary permit not to exceed three years

Quiet time at 10 p.m.

No parking on the street

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Austin Parker, 1631 Olive, Murray was sworn in. Mr. Parker said that he is concerned that whatever ruling the board should choose, it will set the precedence for the neighborhood and future rulings. They would like to keep the neighborhood as single family residential.

Chairman Krieb closed the public hearing. He explained that all of the similar requests that have made in the previous three years have been denied by the board; however, every case that the board deals with should be decided on its own merits. He then turned the item over to the board for discussion and a motion.

Josh Vernon commented that the long term proposed use for the property indicates the intent for this property to be a single family residence and that this is only a temporary situation. The evidence has been shown by the intent to take care of the property. The exterior of the space had improved over the previous 18 months since the ownership of the property has changed. Bobbie Weatherly stated that this type situation seemed to be an on-going dilemma in our community. She continued that it is everyone in the community's responsibility to enforce the Zoning Ordinance. She stated that if you want to have your son or daughter feel safe, then maybe they would feel safer in a dorm. Terry Strieter said that Murray has had this problem for a long time. If the issue of Jessie being afraid to live there alone requires her to have a girlfriend live with her, then maybe a good security system would satisfy that. Mary Anne Medlock said that she often wonders whether we are educating potential property owners enough before they buy into our communities. There are Zoning Ordinances that must be upheld. The misunderstanding of what R-2 means in this community is unfortunate. She said that the Planning Commission reviewed this area a few years ago and had thought about changing the area to R-4 (since that is what it is being used as primarily); however, they decided to leave it as R-2. She said that sends a strong message in itself. Linda Scott added that the revitalization of some of these communities is very important. There are homeowners that have invested a lot of time and money in their properties as R-2 properties and she feels like their investments need to be honored.

Linda Scott made a motion to deny the conditional use permit to allow two non-related persons to occupy the premises in an R-2 zoning district located at 1634 Olive Street. The property should be brought into compliance by December 31, 2014. Mary Anne Medlock seconded the motion and the motion carried with a 5-1 roll call vote. *Josh Vernon voted no.*

Questions and Comments: None

Adjournment: Mary Anne Medlock made a motion to adjourn. Linda Scott seconded the motion and the motion carried unanimously. *The meeting adjourned at 615 p.m.*