

MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, JULY 20, 2022
4:30 P.M.

The Murray Board of Zoning Adjustments met in a regular meeting on Wednesday, July 20, 2022 at 4:30 p.m. in City Hall at 500 Main Street.

Board Members Present: Mike Faihst, Jim Foster, Carmen Garland, Paula Hulick, John Krieb, and Bobby Weatherly

Board Members Absent: Josh Vernon

Also Present: Rakov Aetherus, Lindsay Aycock, Dannetta Clayton, Carol Downey, Kim Miles, Attorney David Perlow, Alberto Vera Lescano, David Hettinger, Monte and Janet Finch, and public audience.

Chairman Faihst called the meeting to order and welcomed all guests and applicants. Kim Miles called the roll.

Chairman Faihst called for a motion to approve the minutes from the special called BZA meeting on June 3, 2022.

Paula Hulick made a motion to approve the minutes from the special called BZA meeting on June 3, 2022 as corrected. John Krieb seconded the motion and the motion carried unanimously.

Chairman Faihst called for a motion to approve the minutes from the regular BZA meeting on June 22, 2022.

Carmen Garland made a motion to approve the minutes from the regular BZA meeting on June 22, 2022 as presented. Jim Foster seconded the motion and the motion carried unanimously.

Public Hearing: Dimensional Variance Application: 1616 Miller Avenue – Alberto Vera Lescano: request for a three-foot variance for the purpose of constructing an accessory building on the west side of the rear yard. Carol Downey reviewed the regulations in the ordinance pertaining to this request and presented the Staff Report. The plan is to demolish the existing nonconforming building and build a new garage. The proposed garage is to be constructed on a concrete pad poured two feet away from the property line and a three-foot variance is requested. The proposed garage would be constructed two and a half feet from the property line. Carol showed pictures of the zoning map and the surrounding properties as well as renderings of the garage placement.

Alberto Vera Lescano came forward and was sworn in. The board asked if there would be a garage door and what type of materials would be used for the garage. Mr. Vera replied that the garage would be all metal including the main door on the front and it would match the house.

The board also asked his reasoning for not moving it the five feet required and Mr. Vera responded that he doesn't want to have to remove a tree in the backyard.

Chairman Faihst opened the public hearing and asked if anyone wished to speak in favor or opposition of this request.

No one came forward so Chairman Faihst closed the public hearing and brought it back to the board for discussion and a motion. The board asked about the neighbors' responses and for clarification on the setback. Carol stated that none of the surrounding property owners who received letters were in opposition and Mr. Vera presented a picture of the garage with specifications that satisfied the board's setback question.

Chairman Faihst made a motion to approve the dimensional variance request to allow a three-foot variance for the purpose of constructing an accessory building on the west side of the rear yard at 1616 Miller Avenue, which moves the garage further away from the line than the previous garage. The testimony presented in this public hearing has shown based on the findings, it does not adversely affect public health, safety, or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or nuisance to the public, and will not allow unreasonable circumvention of the requirements of the zoning ordinance. Bobby Weatherly seconded the motion and the motion carried with a 6-0 roll call vote.

Public Hearing: Conditional Use Permit: 1169 Robertson Road South – DMK Development Group – request to utilize the property for a proposed development consisting of one building housing assisted living and memory care. Carol Downey explained the annexation process and the purpose of the meeting. She reviewed the ordinance for Conditional Use Permits, showed the zoning map and presented the Staff Report. Carol stated that the property owner is requesting the property to be annexed into the City of Murray and that on July 19, 2022, the Planning Commission forwarded a zoning recommendation of R-4 (Multi-Family Residential) to the City Council. She described the zoning and land use of adjacent properties and how they relate to the 2020 Comprehensive Plan regarding density, as well as the reasoning for the R-4 recommendation. She shared that the development is to consist of one building to house 54 assisted living apartments and 25 memory care apartments. It would have multiple dining areas, an on-site chef, an activity room, beauty and barber salon, library, fitness center, a putting green and landscaped courtyards. All public utilities are available at the property as well. Carol stated that currently, less than 1% of the land in the City of Murray is dedicated to assisted living. She explained in detail how the request is supported by the Goals and Objectives in the Future Land Use section, the Community Relations section, the Economy section, and the Public Facilities and Services section of the 2020 Comprehensive Plan and also in the Land Use Element and the Community Facilities Element. Carol presented pictures of the property, the surrounding properties, and street views. The board asked about the location of a drainage ditch and the pond.

David Hettinger, DMK Development, came forward and was sworn in. Mr. Hettinger described the proposed development, shared pictures of the interior and exterior of the facility and a

conceptual site plan. He explained their operating partner would be Charter Senior Living and the positive economic impact the development would have on the city. The board asked how long DMK has been building these facilities and what they are doing differently now than when they started. Mr. Hettinger replied that they started in 2007 and they focus more now on making their facilities personal and feel like home. The board inquired about resident pricing and the surrounding areas of their other properties. He responded that he could get the pricing and the other properties vary but they have built some in similar surroundings as the proposed property. The board asked why this particular property was chosen and Mr. Hettinger shared that their market analysis showed a need for the area. Then they looked at what was available and the shape and aesthetics of this property helped in the decision process. Mr. Hettinger addressed the traffic, stormwater and setback concerns from the July 19, 2022 Planning Commission meeting. He stated that they want to be good neighbors and will consider all factors. The board asked if they would put another building on the unused acreage in the future and Mr. Hettinger indicated they are more interested in maintaining the greenspace at this time.

Monte Finch, Applicant, came forward and was sworn in. He thanked everyone and explained that they were approached and asked if they would sell this property. Mr. Finch said he thinks it would be a good facility and a great option for our community. He spoke to the traffic concerns and reiterated that if he developed it with houses instead, the traffic impact would be much greater. He stated that he liked that the company is willing to look at the setback concern and that he appreciates the board's consideration for this request.

At 5:25 p.m., Chairman Faihst recommended a five-minute recess. The meeting resumed at 5:30 p.m.

Attorney David Perlow reminded the board that their goal for this meeting is to decide 1) if this project is a permissible conditional use under R-4, assuming the zoning recommendation and the annexation are approved by City Council and 2) will this project adversely affect public health, safety, or welfare; alter the essential character of the general vicinity; cause a hazard or nuisance to the public; or allow unreasonable circumvention of the requirements of the zoning ordinance? Mr. Perlow stated that these are the things they should be looking for from the presenters' testimonies. He also clarified that anyone from the audience with a question for the developer should come forward and pose the question to the board, who would then pose it to the developer during the rebuttal.

Chairman Faihst opened the public hearing and asked if anyone wished to speak in favor of this request.

Dannetta Clayton read a letter from Mark Manning in favor of the project, which was submitted for the record. The board asked if the property stays in the county and is not annexed, could the project go forward exactly as proposed, with the exception that they would have to provide a sewage lagoon and install a well for water? Mrs. Clayton responded affirmatively.

Chairman Faihst asked if anyone wished to speak in opposition of this request.

Attorney David Perlow explained that the night before was a Planning Commission meeting. It was opened and adjourned and minutes were kept. Tonight, is a completely separate meeting and nothing said last night will be in the record or considered. He mentioned that it may feel like you are repeating yourself but for this record, you are not.

Carol Falwell came forward and was sworn in. Mrs. Falwell declared she and her husband, Bobby, were representing Falwell Estates and she started a petition in opposition of the requested zoning, which she submitted for the record. Mrs. Falwell described the reasons she and some of the other neighboring property owners were against the zoning including possible staffing issues, increased traffic, drainage problems, and incompatibility with the surrounding area. She listed several stipulations they wanted added to the Conditional Use Permit, if it were to go forward, including seeing the stormwater detention plan, seeing a rendering of the facility rotated on the property, having a traffic impact study done while school is in session, and having a site distance study performed.

Hal Nance came forward and was sworn in. Mr. Nance claimed this facility would affect property values, the future of new single-family homes in the areas and the future development of the city.

Timothy Joseph Allen came forward and was sworn in. Mr. Allen declared the facility would alter the character of the neighborhood and those living there and would also affect the safety of the children. He and his family bought a home in this area because it was quiet and they wanted to raise their children there. Mr. Allen posed a question to the developer regarding the availability of other properties in Murray.

Eric Penniston came forward and was sworn in. Mr. Penniston stated his concern as to the placement and orientation of the property.

Amber Ryan came forward and was sworn in. Mrs. Ryan shared her worry in regards to traffic and safety of their children and thinks it would be better for somewhere else in the community.

Allen Besand came forward and was sworn in. Mr. Besand reiterated the property value and traffic concerns. He asked if the city would be willing to take over Robertson Road and put in a four-way stop at Robertson Road and Wiswell Road.

Carol Falwell came forward and voiced her opinion that a commercial business is not compatible in this residential area.

Hal Nance came forward and reiterated the traffic and road condition concerns.

Betty Hanson came forward and was sworn in. Ms. Hanson, having worked with different assisted living facilities, questioned the amount of pay and staff intended for this project as well as their ability to achieve adequate occupancy.

Chairman Faihst closed the public hearing and asked the developer to come forward for rebuttal if he would like.

David Hettinger came forward and addressed the aforementioned concerns. He stated that they have been building these facilities for 15 years and have never had one fail. He disclosed the pay ranges for the staff, which were all above \$15 per hour. He disagreed with the claim that this is a high-density project since it was defined as low-density per the 2020 Comprehensive Plan. He also disagreed with the statements that property values will decrease without any facts presented. Mr. Hettinger shared that available properties were researched by their company and this one was the best fit for the intent of the development. He presented that the building is actually 50 feet off of Roberston Road and they would not want to move it to the middle of the property and lose trees. Mr. Hettinger explained that they would have to meet the site distance and road standards as set forth and would be as accommodating as possible on top of that aspect as long as it doesn't slow their progress. The board asked if the facility could be moved down and back and Mr. Hettinger replied that it seemed to be an easy adjustment.

Carol Falwell came forward, questioned the orientation and placement of the facility and demanded another option.

Mr. Hettinger articulated that this orientation is proven effective for their staff and residents and they would also not want to flip it and have the memory care residents facing the road.

Chairman Faihst brought it back to the board for discussion and a motion. The board discussed several items including future growth in the area and traffic being imminent, the project being built regardless if it is approved by the city, moving the facility back off Robertson Road, the submitted petition and their role in this meeting.

Attorney David Perlow reminded the board that tonight's decision is conditioned upon City Council annexing and zoning the property R-4.

John Krieb made a motion to recommend approval of a Conditional Use Permit, requested by DMK Development Group, LLC, contingent upon the City Council passing the annexation request and zoning amendment of R-4, DMK Development Group's purchase of the property, and the facility layout being adjusted to the south and to the west; for a proposed development consisting of one building housing 54 assisted living apartments and 25 memory care apartments to be developed on the 16.935- acre tract of land owned by Janet B. Finch located on Roberston Road South and approximately 1250 feet to the north of Wiswell Road, listed as PVA Parcel # 033-0-0027, as presented based on the following findings of fact: 1) The City of Murray Ordinance, Chapter 156.036|Multi-Family Districts, provides the allowance of a Conditional Use Permit for "nursing homes, rest homes, retirement homes, and convalescent homes and day care nursing schools" (§ 156.036 (D)(3)(c)., 2) There is a great need for this type of facility in Murray Calloway County, 3) There is a positive economic impact of jobs, payroll tax and property tax, 4) This request meets several of the 2020 Comprehensive Plan requirements including the Community

Facilities Element; the Future Land Use, Community Relations, Economy and Public Facilities and Services Goals and Objectives; and two objectives of the Land Use Element, and 5) The track record of the developer coordinating with local entities and schools during the process is a positive aspect as well. Jim Foster seconded the motion and the motion carried with a 5-1 roll call vote. Carmen Garland voted no.

Discussion: None

Questions and Comments: Chairman Faihst gave an update on the 2022 Comprehensive Plan meetings.

Chairman Faihst called for a motion to adjourn.

Jim Foster made a motion to adjourn. Carmen Garland seconded the motion. The meeting adjourned at approximately 6:52 p.m.

Chairman, Mike Faihst

Recording Secretary, Lindsay Aycock