

**REGULAR MEETING MINUTES
OF THE CITY OF MURFREESBORO
BOARD OF ZONING APPEALS**

City Hall, 111 W. Vine Street, Council Chambers

APRIL 28, 2021, 1:00 PM

Members Present:

Davis Young, Chair
Ken Halliburton, Vice-Chair
Julie King
Tim Tipps
Misty Foy (via Zoom)

Staff Present:

Marina Rush, *Principal Planner*
Matthew Blomeley, *Assistant Planning Director*
Roman Hankins, *Assistant City Attorney*
Serena Harris, *Recording Assistant*

1. Call to order:

Chairman Young called the meeting to order at 1:00 pm and announced that in accord with the Executive Order of the Governor one member (Misty Foy) would be participating electronically and all votes would be conducted by roll call.

2. Determination of a quorum:

Chairman Thompson determined that a quorum was present.

3. Old Business:

- a. Zoning application [2021-004] for 2901 South Church Street, requesting a special use permit in order to install a drive-up window electronic menu board and queuing lane within 200 feet of property zoned PRD (Planned Residential District) in a Commercial Fringe (CF) zone. (Project Planner: Austin Cooper):**

Marina Rush addressed the board regarding receipt of a letter with comments about the proposal from a resident and requesting to speak at today's meeting.

Assistant City Attorney shared general rule regarding public comments before the board, is that a public hearing will be advertised for a date certain. For this application, the public hearing was at last month's meeting. Once the Chair has closed the public comment session of the hearing, no further public comments would be allowed.

Our Legal Department has determined that the request has equitable considerations in it regarding the community. The Tennessee Open Meetings Act provides no permissions for the public to speak at a public meeting, it's strictly within the purview of the Board. However, Mr. Hankins stated the Legal Department believes it is a suspendable rule, if there is a motion, second, and majority vote to suspend the rule and allow additional public comment, in writing or oral.

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Ken Halliburton moved to suspend the rule and allow a public hearing to take public comments at this meeting for this application; the motion was seconded by Tim Tipps; there being no discussion upon roll call the public hearing allowance was approved by the following vote:

**Aye: Tim Tipps
Ken Halliburton
Julie King
Misty Foy
Chair Davis Young**

Nay: None

Mr. Hankins advised Chairman Young, that he will be able to direct the proceedings for the comments since public comments has been allowed.

Ms. Rush presented the staff comments regarding this Item, a copy of which is maintained in the permanent files of the Planning Department and is incorporated into these minutes by reference.

Mr. Ken Halliburton inquired about the City's genesis for the 200-foot rule with respect to the electronic menu board.

Mr. Matthew Blomeley addressed the board stating that the standard may have been included when the CF zoning district was adopted.

Ms. Julie King inquired if the BZA has historically allowed the distance differential, and what the precedence is with prior cases have been in the past prior deciding.

Mr. Tipps requested Ms. Rush to re-review the sound study results for the 2901 Church Street property.

There being no further questions for staff, Mr. Young invited representatives to come forth to discuss their findings.

Mr. Vu Le of H. C. Klover Architects, on behalf of Panda Express and CFT NV Developments, LLC. Mr. Le offered insight on the premise of the sound study. Addressing Ms. Kings question, Mr. Le referred Board to the 3:00 p.m. recordings of Duncan Donuts of the sound study.

Mr. Le offered further comparison of the sound study with the proposed location and comparable property of Dunkin Doughnuts.

Chairman Young opened the public hearing.

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Daniel Creach of 2890 Runnymede Dr., Murfreesboro, TN came forward to express concerns opposing the drive-up window electronic menu board. He stated that there is a direct conflict with the City's regulatory standards of 200 feet. Mr. Creach expressed that customer, vehicular noise, and other ambiguous concerns were not considered in the sound study and that the proposed tree line barrier will take years to mature. He also reviewed the impact of particulate and light pollution to residents of the community.

Shirley Bowman of 2902 Runnymede Dr., Murfreesboro, TN reiterated the negative impact the drive-thru restaurant would have on her quality of life, as her fence is adjacent to the proposed building site and Dunkin Donuts. She asked for the board's consideration to deny

Lynn Watson, attorney representing the property owners, Smotherman Family, reviewed his history of employment as an Assistant City Attorney for the City of Murfreesboro and understanding of the City's zoning ordinance. He stated when the zoning ordinance was adopted and allowed for the issuance of a variance of the distance requirements, it recognized that the 200 feet may not work in every situation. A standard was incorporated into the ordinance to allow special situations like this application to be considered. Mr. Watson expressed his opinion that this proposal exceeded all efforts to meet the conditions of that standard and staff recommendations. Mr. Watson asked that the Board favorably consider the applicant's request for this variance.

Mr. Vu Le came forward to provide further clarification that in addition to the ordinance requirements, additional fencing and landscaping would be installed along the northeast corner to protect Mr. Creach's property

Chairman Young closed the public hearing.

Julie King requested clarification from staff what type of businesses can be here by right and if they would require a similar buffer.

Tim Tipps commented on the anecdotal evidence that the efforts are being made to mitigate the resident's objections.

Ken Halliburton expressed that we're losing the integrity of Commercial Fringe zoning and the 200 ft distance requirement, and the basis of it being established to ensure that we're not negatively affecting residential zoning.

Mr. Blomeley came forward to review the Dairy Queen on Cason Lane, stating that it is currently zoned commercial highway.

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Julie King stated that as a large part of her vote, it is difficult for her to decide today, if it is something that has never been voted on or allowed before in Murfreesboro. Her position rests on whether this has been previously allowed.

Mr. Blomeley offered to locate the record to provide clarification with a 5-10-minute recess.

Tim Tipps made a motion for a recess; the motion was seconded by Julie King.

Mr. Blomeley returned to review the Dairy Queen property file findings, and discuss decisions by the Planning Commission's and Board of Zoning Appeals for this comp.

Tim Tipps made a motion to approve the request subject to the following conditions:

- 1. Applicant shall apply for and obtain approval of a site plan prior to the application of a building permit.**
- 2. Site Plan shall incorporate a landscaped buffer (Type D), minimum 4 feet tall earthen berm, and 6 feet tall privacy fence along the east property line.**
- 3. Drive-through window shall be closed and may not be opened or operated between the hours of 10:00 PM to 7:00 AM daily.**

The motion was seconded by Misty Foy. Upon roll call, the motion was passed by the following vote.

**Aye: Tim Tipps
Misty Foy
Chair Davis Young**

**Nay: Ken Halliburton
Julie King**

Staff Reports and Other Business:

- b. Marina Rush announced that in accord with the Executive Order of the Governor, the ability of Tennessee's local governing bodies authority to conduct essential business meeting by electronic means expires today, April 28, 2001. Beginning next month, all meetings will be in person.

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4. Adjourn.

Tim Tipps moved to adjourn the meeting; the motion was seconded by Chairman Young; there being no further discussion, the meeting was adjourned at 2:10 p.m.

CHAIRMAN

SECRETARY