

**MURRAY BOARD OF ZONING ADJUSTMENTS MINUTES
NOVEMBER 17, 2004**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, December 15, 2004 at 4:30 p.m. in the council chambers of City Hall located at 104 N. 5th Street.

Board Members Present: Andy Dunn, Red Howe, Scott Seiber, Helen Spann, George Stockton and Bill Whitaker

Board Members Absent: Ed Davis

Also Present: Candace Dowdy, David Roberts, Mike Pitman and public audience

Chairman Whitaker called the meeting to order and welcomed the guests. Chairman Whitaker stated that there was one correction to the October 20, 2004 minutes regarding an address change and with that correction noted he would ask for a motion to approve the minutes. **Scott Seiber made a motion to approve the minutes with corrections. George Stockton seconded the motion and it carried by a 6-0 voice vote.**

Review of information regarding the use of property located at 1628 Farmer Avenue, previously discussed in September 22, 2004 BZA meeting – Allen Winchester: Candace Dowdy stated that the BZA did review Allen Winchester's conditional use permit application to allow up to four non-related persons to occupy the premises at 1628 Farmer Avenue in the September 22, 2004 BZA meeting. Candace Dowdy stated that the property was in an R-2 zone and that the BZA made a motion in the September 22, 2004 meeting to deny the application until further information was provided regarding the property being grandfathered in and that the two abandoned vehicles had to be removed immediately. Candace Dowdy also stated that the property owner had until December 31, 2004 to bring the property into compliance. Candace Dowdy stated that Mr. Winchester had contacted the Planning office and stated that he had some information he would like to present at the November 17, 2004 meeting. Chairman Whitaker reminded those present that there had been discussion regarding what provision the Murray Zoning Ordinance made for pre-existing, non-conforming uses, and cited Section III, Article 4 of said ordinance.

Chairman Whitaker swore Allen Winchester in for his testimony. Mr. Winchester asked for a clarification of the number of years that KRS requires for continuous illegal non-conforming use, in order for a legal non-conforming use to continue. Mr. Winchester stated that the property had been used as rental property to college students since August 1993. Mr. Winchester stated that Mr. Simmons, the previous owner, was not able to supply physical evidence that he had used the property as rental to college students because he had not kept the paperwork. Mr. Simmons did send Mr. Winchester a notarized letter stating that he had used the property as rental to college students since August 1993. Mr. Winchester stated that this was evidence for his statement that the property has been used as rental to college students for 10-12 years. Mr. Winchester stated that the disabled car that was parked on that premises has been moved to another location and the renter owning it has been asked to leave. Scott Seiber asked Mr.

Winchester if he had asked Mr. Simmons to help in contacting the student who had lived on the premises, which may provide a second verification. Chairman Whitaker asked Mr. Winchester about the parking situation on the premises. Mr. Winchester stated that there was room in the driveway for at least four cars to park. Scott Seiber asked Mr. Winchester how many bedrooms were in the house. Mr. Winchester stated that there were three (3) bedrooms, and that a TV room was being used as a bedroom as well. Scott Seiber asked Mr. Winchester if he planned to continue renting to four persons, or keep it at three after the previously discussed person moves out. Mr. Winchester stated that he would like to rent to a fourth person if possible. Scott Seiber stated that renting to four persons was beyond the accommodations of the house, in his opinion. Scott Seiber stated that Mr. Winchester provided good evidence for the allowance of a non-conforming use. Chairman Whitaker asked Mike Pitman if he was comfortable with the evidence that Mr. Winchester presented. Mike Pitman stated that it was not disputable that the property was being used as multi-family now, but if at any time during the past, the property was ever rented to an individual, or a single family, that would break the continuous non-conforming use chain presented here as evidence and thus void the plea that a 10 year continuous illegal use should allow conditional use permission. Mike Pitman stated that although the evidence letter from Mr. Simmons could sway a decision either way, it was up to the landowner to supply evidence to the collective satisfaction of the BZA, whatever form of evidence the applicant deems necessary.

Chairman Whitaker asked for a motion. **Helen Spann moved that Mr. Winchester's property at 1628 Farmer be grandfathered in based on the evidence he presented to allow a conditional use permit for up to four non-related persons to reside on the premises. The motion was seconded by Andy Dunn.** Chairman Whitaker called for any questions. Scott Seiber asked if the motion could be revised from allowing 4 persons, to allowing 3 persons to reside on the premises. Chairman Whitaker asked if discussion on the parking of friend's vehicles on the premises was necessary, and if it should be included on the permit issued. Scott Seiber stated that this would increase the burden of enforcement for administration. Mike Pitman discussed that off-street parking guidelines would have to be met. David Roberts stated that two (2) parking spaces per dwelling unit were required, then one (1) additional parking space per bedroom, totaling three (3) spaces required, as long as the TV/Study room was not considered a bedroom. Mike Pitman stated that according to KRS, the residential structure would need to maintain its current size, with no additions to continue with its non-conforming compliance. The motion was amended to allow three (3) persons instead of four (4), based upon the number of bedrooms in the house.

The motion was then amended by Helen Spann to grant a conditional use permit allowing up to three (3) non-related persons to occupy the premises at 1628 Farmer Avenue. The motion carried by a 6-0 vote.

Public hearing to review request for conditional use permit to allow up to four non-related persons to occupy the premises in an R-2 zone – 1621 Main Street – Vincent Abell: Candace Dowdy stated that the property was located on the corner of Main and Williams Streets. Ms. Dowdy stated that Mr. Abell had installed an additional driveway to the property and that Mr. Abell's son, as well as three non-related persons were living on the premises. The additional driveway allows for additional parking on the premises. Ms. Dowdy stated that the previous owner used the property as a single family dwelling;

therefore the property would not be grandfathered in as a pre-existing, non-conforming use. Ms. Dowdy stated that some of the adjacent properties were rental properties and that there were also two owner-occupied adjacent properties. Ms. Dowdy stated that the vacant lot just to the east is large enough for a single-family residence. Ms. Dowdy also stated that the new driveway off Williams Street was constructed with a turn-around so that residents would not have to back out onto the street. Ms. Dowdy stated that there were two vehicles being parked on Williams Street, as well as two vehicles being parked in the driveway. Ms. Dowdy stated that two adjacent property owners had contacted her and neither had opposition to the granting of the conditional use permit. Scott Seiber asked about the parking situation on Williams Street. Ms. Dowdy stated that the Murray Police Department had issued a citation for a parking violation, but she did not know if “no parking” signs were posted.

Chairman Whitaker opened the public hearing and asked if there was anyone in the audience who would like to speak in favor of or in opposition to this issue. Chairman Whitaker swore Vincent Abell in for his testimony. Mr. Abell stated that the reason he purchased the property was for health reasons concerning his son, a Murray State student. Mr. Abell stated that there were four persons living on the premises. Mr. Abell stated that he had spent \$10,000 upgrading the residence in numerous ways. Mr. Abell stated that the house had four (4) bedrooms, one (1) bath and an extra vanity in the laundry room. Mr. Abell stated he had spoken with two (2) adjacent property owners to establish a good neighbor relationship prior to receiving the notification letter from the Planning and Zoning Department. Scott Seiber stated that one (1) bathroom was a minimal provision for four (4) non-related persons. Mr. Abell stated that he felt the bathroom use was comparable to a family of four (4). Chairman Whitaker stated that this request, as with others, needs the issue of adequate parking addressed, for both residents and visitors. Mr. Abell stated that there was space for a total of 4 cars in the driveway and rear without any parking on the street. Mr. Abell stated that there were friends parking on the premises from time to time, but that they were instructed to not park on the street. Chairman Whitaker stated that Mr. Abell had done a good job of providing aesthetically pleasing parking and screening in a way that allows this property to be a good example of how a multi-family use could fit into the neighborhood. Mr. Abell stated that his intention was to someday provide housing for his daughter to attend MSU, as well, and that he planned to add an additional bathroom and limit the tenants to three (3).

Chairman Whitaker asked for discussion or a motion. **Red Howe made a motion to grant a conditional use permit to allow up to four (4) non-related persons contingent upon there being no on street parking, no more than four (4) persons residing on the premises and there being no extended, recurring parking by non-residents. Helen Spann seconded the motion. The motion carried by a 6-0 vote.**

Public Hearing to review request for conditional use permit to allow one (1) non-related person to occupy the premises at 1633 Hamilton Avenue – Jon-Michael Hill: Candace Dowdy showed the BZA the location of the property on aerial photography with zoning district boundaries. Candace Dowdy stated that the property to the east was rental property. Candace Dowdy stated that there was a vacant lot directly across the street. Candace Dowdy stated that two (2) of the adjacent property owners notified were owner-occupied. Candace Dowdy stated that there was only one (1) non-related person living on the premises, and the intent of the owner was to keep it that way.

George Stockton excused himself from the meeting.

Chairman Whitaker opened the public hearing. Chairman Whitaker swore Jon-Michael Hill in for his testimony. Jon-Michael Hill stated that he believes that the property at 1630 Hamilton is being used as rental property, specifically the lower level. Mr. Hill also stated that there was considerable traffic from the renters. Mr. Hill stated that he owned the adjacent vacant lot to the west. Mr. Hill stated that the vehicles in the photos usually are kept in the garage. Chairman Whitaker stated that it was uncommon for an applicant to request only the addition of one (1) non-related person. Mr. Hill stated that he purchased the property to live in himself. Mr. Hill stated that his intent was to have the one roommate until he graduated from Murray State University and then the use of the property would just be owner-occupied. Jon Michael-Hill stated that he intends to concrete the driveway and sidewalks. Mr. Hill also stated that he had made numerous costly improvements to the property, both inside and out.

Chairman Whitaker closed the public hearing and asked for a motion. David Roberts asked for advisory regarding whether the conditional use would stay with the property, regardless of the owner, or if it would be void after ownership transfer. Mike Pitman advised the board to add the stipulation to the conditional use. **Scott Seiber made a motion to approve the conditional use permit limiting the additional tenants to no more than one (1) non-related person, no non-resident parking and that the permit be valid only for the current owner. Helen Spann seconded the motion. The motion carried by a 5-0 voice vote.**

Chairman Whitaker asked if there were any further questions or comments from the Board members.

David Roberts stated that the sign committee recommended to the Planning Commission to prohibit electronic reader boards in all zones. Mr. Roberts stated that the Planning Commission did vote to allow electronic reader boards, stating that no more than 30% of total sign area is to be used for electronic reader board, amber in color, limited to specific display timing, and shall not display graphic or artistic animations other than text changes. Mr. Roberts stated that the recommendations for the proposed changes to the sign regulations and the zoning ordinance would be forwarded on to the city council for their consideration.

Candace Dowdy gave the board information regarding Bed & Breakfasts and asked them to review the information prior to next month's meeting.

Being no further business the meeting adjourned.

Chairman, Bill Whitaker

Recording Secretary, Candace Dowdy