

**MURRAY BOARD OF ZONING ADJUSTMENTS MINUTES
REGULAR MEETING
WEDNESDAY, AUGUST 17, 2005**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, August 17, 2005 at 4:30 p.m. in the council chambers of city hall at 104 North 5th Street.

Board Members Present: Darren Jones, George Stockton, Scott Seiber, Helen Spann and Bill Whitaker

Board Members Absent: Ed Davis and Andy Dunn

Also Present: Candace Dowdy, Mike Pitman, Sam Perry, Nina Hathcock, Reika Ebert, Lexie Moore, Sue Miller, Jeanetta Hall, Homer Hall, Robert Bright, Drucilla Owens, Jeff Sparks, Dwain Taylor, Dan Taylor, Sheila Nance, Harold Hurt, Bob Stillwell, Trip Purdom, Chris Maley, Scott Vaughn, Butch Seargent, Van Childress

Chairman Whitaker called the meeting to order at 4:30 p.m. and welcomed the guests. Chairman Whitaker briefed the audience on the procedures of the meeting due to the large attendance and lengthy agenda. Chairman Whitaker asked for approval of the July 20, 2005 regular meeting minutes. **Scott Seiber made a motion to approve the minutes as presented, with one minor correction. Helen Spann seconded the motion and the motion carried with a 5-0 voice vote.**

Public Hearing For Conditional Use Permit For Operation Of An In-Home Daycare As A Home Occupation In An R-2 Zoning District—1709 Ryan Avenue—Nina Hathcock: Candace Dowdy stated that Ms. Hathcock resides at 1709 Ryan Avenue. Ms. Dowdy stated that the Planning Department received a call from someone in the neighborhood stating that someone was possibly operating a daycare at that address. Ms. Dowdy stated that a letter was sent, and Ms. Hathcock called and responded stating that she kept two (2) non-related children as well as two (2) children of her own. Ms. Dowdy stated that the PADD office informed her that if someone was keeping three (3) or fewer non-related children in their home, it is known as a home provider and requires no license or certification. If there were four (4) to six (6) children, it would be considered a certified home. No additional employee would be needed, but a back-up person is required. Seven (7) to twelve (12) children would require an assistant. Ms. Hathcock would like to start the process in becoming a certified home if the hearing went well tonight. Ms. Dowdy showed slides of the property, owned by Gerald Carter. One lane of the driveway is concrete and the other is graveled, allowing at least four (4) vehicles to park off-street. Scott Seiber asked what the difference was between a back-up staff person and a regular employee. Ms. Dowdy stated that they would probably not be there unless it was an emergency. Ms. Dowdy stated that all adjacent property owners were notified, but there have not been any comments for or against this application before tonight. Ms. Hathcock would like to put a small plaque next to the front door with the name of her business.

Chairman Whitaker opened the public hearing and swore in Nina Hathcock. Chairman Whitaker asked why she would need a sign. Ms. Hathcock stated that she did not want a sign in the yard, just a small sign next to the door for identification. Chairman Whitaker stated that it was unusual for an application like this to be at a rental property. Ms.

Hathcock stated that she planned to stay there for awhile, renting. Ms. Hathcock stated that she had two children of her own and that she also keeps one full-time and one part-time additional child. Chairman Whitaker asked what her hours of operation were. Ms. Hathcock stated that in her handbook that she gives to the parents, she states that her hours are 5:30 a.m. to 6:30 p.m. Monday through Friday. There are no night or weekend hours. Scott Seiber asked what the range of ages was with the children. Ms. Hathcock stated that hers were nine (9) and four (4) years old and that the full-time child was 20 months and the part-time child was three (3) months. Mr. Seiber asked if she would like to move on to the next level. Ms. Hathcock confirmed that she would like to become certified. Mr. Seiber asked if she had previous experience in child care. Ms. Hathcock stated that she has about 22 years experience in the child care field, once being an assistant director to a daycare. Chairman Whitaker asked when the parents picked up their children. Ms. Hathcock stated that they drop off at different times, but that they sometimes pick up at the same time. Mr. Seiber asked if she considered changing locations if her business grew. Ms. Hathcock stated that was unpredictable, but that it could happen if the business blossomed. Mr. Seiber asked if she were to become certified, would this be brought back to the board. Ms. Dowdy stated that could be the case if limitations such as a maximum number of children were placed on the permit. Ms. Dowdy asked the board to take a look at the variables of home size, parking provisions and neighborhood to determine what was best. Mr. Seiber stated that he did not see a problem with going to four (4) children, but going to six (6) could pose a problem with traffic in the neighborhood and ingress/egress to the property.

Ms. Hathcock stated that she is only allowed to keep six (6) children at a time: four (4) plus her two (2), and that she does not have to have an assistant. Ms. Dowdy stated that she would have to confirm that with the PADD office. The PADD office is only there for assistance, in the application process, and does not mandate the licensing done by the State of Kentucky. Mr. Seiber stated that he would be inclined to table this item since he is unsure of whether a license is needed or not. Helen Spann stated that she would also be inclined to table the item if there is confusion. Ms. Hathcock found in the regulations that a certification is only needed if caring for more than three (3) non-related children.

Legal counsel, Mike Pitman, stated that an option for the board would be to place a condition of no more than three (3) non-related children and if Ms. Hathcock were to obtain certification, she could come back to the board again. George Stockton asked Ms. Hathcock if the landlord had any problem with the property being used this way. Ms. Hathcock stated that he did not and that she discussed this with him before moving in. Helen Spann asked what improvements have been made to the property since she has moved in. Ms. Hathcock stated that she has a play area designated in the garage and that she brought playground equipment into the fenced-in backyard. Scott Seiber asked if the state had guidelines for square footage. Ms. Hathcock stated that the requirement was 35 square feet per child and that she met the requirement, because it was a three (3)-bedroom home. Ms. Spann asked if she has to report to the state as a home provider. Ms. Hathcock stated that she did not. Ms. Hathcock stated that a visit would be made to the daycare if she were to apply for the certification. Chairman Whitaker swore in Reika Ebert. Ms. Ebert stated that she lived on the back side of Ms. Hathcock. Ms. Ebert asked if there was a maximum age allowed in the daycare. Ms. Ebert also asked if this permit

would affect the zoning for the rest of the neighborhood. Ms. Ebert stated that she was not against the daycare, but would like to see that the privacy hedges are maintained.

Chairman Whitaker closed the public hearing. The board agreed on three (3) or less non-related children and that if Ms. Hathcock were to take the business a step further, there would be a track record on which to base her next application.

Helen Spann made a motion to approve the conditional use permit with the following conditions: three (3) or fewer non-related children under the age of six (6) years old, that she have written approval from the homeowner, the permit only be valid during Ms. Hathcock's tenancy at 1709 Ryan Avenue, the property be identified with no more than a two (2) square foot sign and that it operate under all safety and security guidelines of the State of Kentucky. Scott Seiber seconded the motion. Scott Seiber asked if the motion was intended to state under the age of six (6) years. Chairman Whitaker stated that she could have children older than six (6) years. Candace Dowdy stated that it goes with the licensing, under the home provider. **Helen Spann amended the motion to strike the statement regarding age limitation. Chairman Whitaker asked for any further discussion. Being none, the motion carried with a 5-0 vote.**

Public Hearing For Conditional Use Permit For Home Occupation Of Wedding Planner In An R-2 Zoning District—804 Bagwell Boulevard—Lexie Moore: Candace Dowdy stated that Ms. Moore, her husband and her son reside at this address and have been at this location for about one (1) year. Ms. Moore has done this part time business for about three (3) years. Ms. Moore works full time for Dr. Case, while doing her wedding planning in the evening and on weekends. Ms. Dowdy stated that there were no complaints that resulted in this application. Ms. Moore used to live in the county and contacted our office to find out what was necessary to meet clients at her home for consultation. Ms. Moore used to have a small space leased in Southside Shopping Center, but decided to move out because overhead costs were too high. All of the equipment used for weddings and receptions are kept in storage buildings away from her residence. Her clients meet her at the storage building to pick up the equipment if they are simply renting her equipment. Ms. Dowdy stated that all of the services are provided off-site. She has had about 10 clients so far this year. She could have as many as one (1) client per week depending upon the time of the year. Ms. Dowdy stated that a couple of calls from the public referenced a storage building for the business and that Ms. Moore confirmed today that it was a neighbor's storage building, and that it was too close to the property line. Ms. Dowdy stated that there was a 40' right-of-way on each side of the grassy median, according to the Bagwell subdivision plat. Ms. Moore is the only employee of the business. Ms. Dowdy stated that there is no business sign on the premises. Sam Perry stated that the house is three (3) houses south of Fairlane Drive. Ms. Dowdy stated that in 1962 a conditional use permit was approved in the near vicinity for Linda Cochran, for a dance studio. Ms. Dowdy showed slides of Ms. Moore's home and explained that the drive was two cars wide. Ms. Dowdy pointed out a detached garage that is used for yard equipment. Scott Seiber asked if the dance studio was the only approved home occupation in the area. Ms. Dowdy stated that it was. Mr. Perry stated that a conditional use permit would not have been required if the business was conducted totally over the phone, internet or fax. Ms. Dowdy stated that because there

was going to be some vehicular traffic related to the business, a conditional use permit would be required. Mr. Seiber asked if the board had ever approved a wedding planner home occupation before. Ms. Dowdy stated that there was no record of it ever occurring.

Chairman Whitaker opened the public hearing and swore in Lexie Moore. Ms. Moore stated that they used to live in the county and since moving to an apartment in the city, had to rent a small space, plus a storage building. Ms. Moore stated that the clients were so few, that she could not justify the overhead of the storefront. Ms. Moore stated that she wanted to do what was right and get permission to see one (1) or two (2) clients per month in her home for business paperwork and consultation related to the wedding. Ms. Moore stated that she does have a full-time job and this is basically a hobby for her to do on the weekends. Ms. Moore stated that most of the time she is either at the church or the reception with the clients. She only needs permission to meet them at home to do the paperwork and be paid. She just has one (1) room for the business. Chairman Whitaker asked if she stored or moved any equipment at home. Ms. Moore stated that she did not, because of the hassle. Ms. Moore stated that has never met with more than four (4) people at one time and they always come in one (1) vehicle.

Chairman Whitaker swore in Sue Miller. Ms. Miller, an adjoining property owner, represented the neighborhood and presented a petition (Exhibit A) of 58 signatures, opposing the conditional use permit. Ms. Miller stated that the Bagwell subdivision restrictions state that the subdivision is for residential only and they want it to stay that way. Bagwell Boulevard is not conducive to additional traffic. There have already been several delivery trucks in the past few months. There are pedestrians as well as children on bikes. It is the opinion of the homeowners that adding a business in this residential area is going to lower the property values. Granting this permit will open up the possibility of someone else wanting to open up a home business down the street. Ms. Miller stated that if it were an up and coming business then how were they to know if it would stay a part-time business. Ms. Miller asked those in opposition to rise. Chairman Whitaker stated that the business seemed so benign. Ms. Miller agreed, but stated that it could grow and it could lead to more home businesses in the neighborhood and soon the neighborhood would not be residential. Ms. Dowdy stated that any future home occupations would be considered individually by planning staff and the board. Chairman Whitaker stated that the nearby dance studio generates a lot more traffic than this business would. Ms. Miller stated that it was not in their neighborhood. Helen Spann asked how much traffic Ms. Miller would consider excessive. Ms. Miller stated that she did not know. Chairman Whitaker restated the intent of the question that the property owner could actually have more family and friends over than what clients she has had this year. Ms. Miller stated that all she knows is that if the business grows there will be more people coming and going.

Scott Seiber asked if any of the neighbors have talked to Lexie about this. Ms. Miller stated that she did not know and that she never sees her. Mr. Seiber agreed with Chairman Whitaker, that this was a very benign business. Helen Spann stated that she could carry on her business and that no one would even know it. Ms. Spann asked if the rest of the neighborhood knew how much more traffic this would generate. Chairman Whitaker swore in Jeanetta Hall. Ms. Hall stated that she lived to the rear of Ms. Moore and that she did not want more traffic. There are a lot of small children on Bagwell

Boulevard that play in the street and that people coming there do not know about the children. If this business is allowed it is like opening up a Pandora's Box. The neighborhood does not want it. Ms. Hall stated that she has lived there for 28 years and the streets roll up around 9:00 p.m. to 9:30 p.m. and that they would like to see it stay that way. Chairman Whitaker asked what the difference has been since Ms. Moore has been there. Ms. Hall stated that they have noticed lights on the property. Scott Seiber asked what kind of lights. Ms. Hall stated that they were outside lights, and that they go to bed at 10:00 p.m. and they were still on. Ms. Dowdy stated that the Moore's do have a teenage son. Chairman Whitaker asked Ms. Hall to state whether she could tell that there was a business there. Ms. Hall stated that she was retired now and did not want any extra people in the neighborhood.

Darren Jones asked Ms. Miller if the delivery trucks she spoke of were all going specifically to Ms. Moore's house. Ms. Miller stated that the neighbor who is next door to the Moore's was out of town but had told her that there had been several more UPS/FedEx type trucks and most of them were stopping there. Chairman Whitaker swore in Homer Hall. Mr. Hall stated that they had nothing against the people trying to open up this new business, but asked why she could not go to their house if there were so few coming to her. Mr. Hall stated that would satisfy everyone in the neighborhood.

Chairman Whitaker swore in Robert Bright. Mr. Bright stated that his only concern is that no one goes into a business for it to fail. He is very concerned about the domino effect. He, too, has nothing against the Moore's, that they are nice people. If one home business is allowed and it is successful, it grows. Twelfth Street is a good example; it has been very bad there. The homes that are converted to a business-type atmosphere have gone to the dickens. They have moved to this neighborhood because it is quiet and reserved, 13 years ago. There is no place to park in the boulevard area of the neighborhood. Chairman Whitaker swore in Drucilla Owens. Ms. Owens agreed with the domino effect and confirmed that she did not want it in her neighborhood. Ms. Owens stated that she has lived in three (3) different houses in the neighborhood. Chairman Whitaker swore in Jeff Sparks. Mr. Sparks stated that he used to live near this neighborhood on South 9th Street. Mr. Sparks stated that it seemed to him that the people that are objecting to this because of traffic will at some point try to limit the number of friends and family that people can have over. Mr. Sparks speculated that there are a lot of people in the neighborhood that have more friends and family coming to visit them than Ms. Moore is going to have for her side business. Mr. Sparks stated that even if this were extremely successful she is never going to be able to do more than one per week because she is only one person doing the business. Mr. Sparks stated that if he still lived in that neighborhood like he did eight (8) years ago he would have no objections.

Chairman Whitaker asked if Ms. Moore would like to make any responses to the comments made. Ms. Moore stated that she also moved to this street because of the quality of the neighborhood. Ms. Moore stated that she would not do anything to diminish the property or the neighbors in this neighborhood. She cited the new landscaping at her home and that her husband has mowed the median strip on Bagwell Boulevard several times since they have lived there. Ms. Moore stated that her private consultations are by appointment only and by selection only. Ms. Moore stated that her clients will not be there until 10:30 p.m. Chairman Whitaker asked Ms. Moore to address

the question from one of the neighbors about the possibility of her going to the client's house. Ms. Moore stated that she could if it was convenient for them, but the disadvantage was that she would not have her computer, or machine to accept credit cards. Ms. Moore stated that a lot of people do not want to hand out their credit card number because of identity theft.

George Stockton asked if deliveries were made to Ms. Moore's home. Ms. Moore stated that a couple of deliveries have been made to her home in the past, but she is not seeing clients in her home. A delivery was made to her house this week, but it was curtains for her son's bedroom and that she is going to get another delivery this week and it is curtains for her bedroom. Ms. Moore stated that she does not have to have deliveries made to her home; they can be made to another place.

Chairman Whitaker closed the public hearing. Ms. Dowdy stated that according to the Zoning Ordinance, the zoning official has the right to inspect any property which has been issued a conditional use permit to be sure that any conditions are being met. The conditional use permits can be reviewed on an annual basis.

Scott Seiber asked Ms. Sue Miller to respond to a question. Mr. Seiber stated that he has been on the Board of Zoning Adjustments for 13 years and he has never seen any type of domino theory in any neighborhood. Every action taken by the board is done on a case by case basis. If this business were going to generate traffic and generate problems, he would be very sensitive to that, because this is a beautiful neighborhood that he knows well. It would not get much support from this board if it were going to generate problems. Mr. Seiber asked Ms. Miller if the board were to grant this permit for a year, and let the neighborhood keep an eye on it to see if there had been any changes that were not compatible, would she or any of the neighbors be receptive to that. Ms. Miller responded, No. Mr. Seiber stated that he understood why they feel the way they do. Ms. Miller asked why the Bagwell subdivision restrictions did not matter. Mr. Seiber stated that they do matter, but the zoning ordinance allows home occupations if they meet specifications that the board sees fit to grant. The board can place severe restrictions on a conditional use permit. The board is not in the business to change neighborhoods. Mr. Seiber stated that he did not see that this home occupation would have much effect, and at the same time the board respects each of the neighbors and realizes that they would not be there if they did not feel very strongly about this issue.

Chairman Whitaker asked legal counsel, Mike Pitman about the enforcement of the subdivision restrictions. Mr. Pitman stated that the BZA does not enforce subdivision restrictions, and that it would be up to the other property owners in the subdivision. Mr. Pitman stated that it is up to the homeowner to check the subdivision restrictions and be sure that they are in compliance with them. Scott Seiber asked if there was a time limit on subdivision restrictions. Sam Perry stated that usually the expiration is 25 years, with another 10 years for amendments to be made. Mr. Perry stated that planning staff does not enforce the restrictions, but recommend that they be followed for the sake of the whole neighborhood.

Helen Spann stated that this type of business should be able to continue without anyone knowing it was there, if certain conditions were placed on it and they were followed.

Chairman Whitaker asked the board if allowing this home occupation to have 10 or 15 clients per year was changing the neighborhood. Ms. Spann asked what type of promotion or advertising is done for this home occupation. Ms. Moore stated that the only advertising is an annual bridal expo and business cards placed in some businesses in Murray. Ms. Moore reiterated that her business is by appointment only. Ms. Moore stated that most clients are by word-of-mouth. Ms. Spann asked if advertising could be done without using the street address. Ms. Moore agreed that it could and that it has been done that way on her website and her business cards. Mr. Seiber asked Ms. Moore how many clients she has per year. Ms. Moore stated 15-18. Mr. Seiber asked Ms. Moore if she would be comfortable with a restriction of 15-18 clients per year. Ms. Moore confirmed that she would.

Scott Seiber made a motion to approve the conditional use permit for a home occupation of wedding planner to Lexie Moore at 804 Bagwell Boulevard with the following conditions: limited to 15 clients during the course of a year, deliveries of wedding-related material made to a different location, reviewed in 12 months to determine if it should be continued or not. Helen Spann seconded the motion. Helen Spann asked for the following conditions to be added: parking be off-street, marketing not include street location, no clients on the premises after 9:00 p.m. Scott Seiber asked to add the condition of no sign on the premises, noting that there is no identifying marker for the business which would make the house stand out. Scott Seiber amended the motion to reflect Helen Spann's changes. Chairman Whitaker asked if there was any further discussion. Being none, the motion carried with a 4-1 vote. George Stockton voted no.

Public Hearing For Appeal To Board Of Zoning Adjustments Regarding Types, Duration And Frequency Of Temporary Signage Display—1307 South 12th Street—Dwain Taylor Chevrolet-GMC, Inc.—Sheila Nance: Sam Perry stated that this was an appeal that is regarding an item that was discussed last month. Mr. Perry stated that it originated from Dwain Taylor Chevrolet-GMC (hereafter known as DTCG) obtaining a temporary sign permit, then staff requesting the removal of balloons and streamers that are not permitted under the zoning ordinance. DTCG requested that amendments to the zoning ordinance be made to allow balloons and pennants. It was explained to them that amendments to the text would have to be recommended to City Council by the Planning Commission after a public hearing was held. Two (2) letters have been received from DTCG addressed to the Planning Commission/BZA regarding the enforcement of the sign regulations. The most recent letter, dated July 28, 2005 is the appeal letter. The main question to be decided tonight is whether a party-type balloon is considered to be a moving, flapping or rotating sign, by the zoning ordinance. The ordinance addresses tethered balloons specifically, as prohibited, which staff interprets to be the very large balloons. Mr. Perry stated that these requests were brought up to the Planning Commission the previous night. The Planning Commission referred the request to the sign committee, who will report back to the Planning Commission with any proposals for text amendment which will require a public hearing. A recommendation was requested from the BZA in the July meeting; however the BZA did not wish to make any recommendations, only interpretations. Legal counsel recommended one of two options to the applicant: 1) a request for appeal of the decision of the zoning official to the BZA be submitted with a public hearing to be held, or 2) that DTCG continue with their

request to amend the zoning ordinance. DTCG was issued a warning on July 28, 2005 and issued a citation on July 30, 2005, which was a week after the last BZA meeting. District Court has continued the item to August 29, 2005. The fine set forth in the zoning ordinance is \$10 - \$500 per day, per violation. The three items that they are appealing are: (1) the enforcement of the frequency (once every three (3) months is not often enough for temporary signage, (2) the types of temporary signs that are prohibited are too restrictive and (3) duration of time to display is not long enough and that they need up to 30 days. Mr. Perry requested that the BZA specifically address how the ordinance should be interpreted regarding the use of party balloons, and also address whether the zoning official properly enforced the zoning ordinance. The citation was given for: (1) erecting temporary signs without a sign permit, (2) use of balloons, (3) placing yard signs (nine) in the public right-of-way of South 12th Street and (4) erecting more than two (2) temporary signs per event

Scott Seiber asked if the board would need to address the frequency, type and duration issues. Mr. Perry stated that would be needed, in determining whether staff enforced those regulations properly.

Mike Pitman explained to the board that this agenda item is unusual in the fact that it is not a conditional use or variance request. It is an appeal, and the board is playing a role similar to that of an appellate court between staff and the appellant to determine if staff interpreted the ordinance correctly or incorrectly. Mr. Perry stated that the zoning ordinance also refers to an applicant being able to appeal to the board because they are injuriously affected or aggrieved by the decision of the zoning official.

Chairman Whitaker questioned that the only way to define a balloon or pennant is to classify it as a sign. Mr. Pitman recommended that the applicant or representative of DTCG be allowed to speak in the form of a public hearing.

Harold Hurt came forward with a party balloon and stated that he was an attorney representing Dwain Taylor Chevrolet-GMC, Inc. Mr. Hurt stated that they do understand that a text change would have to go through the Planning Commission and then City Council, but they would like to raise questions with the interpretation of the current ordinance. Mr. Hurt stated that the notice of violation was given under the interpretation that the balloon was a sign, and they feel that the balloon has no writing on it; therefore it is not a sign. Mr. Hurt stated that if a balloon were a sign, then folk's tying balloons on their mailboxes for parties would be violating the ordinance. Mr. Hurt stated that they would also like to have an interpretation from the board as to whether an antenna pennant is a sign (Mr. Hurt raised a foil/tinsel antenna pennant for the board to see). Mr. Hurt stated that these were the two basic issues that they are presenting tonight. Mr. Hurt stated that these were key issues for automobile dealers in Murray, because Murray dealerships are competing with dealerships in all the surrounding cities. Those dealers are all using balloons, pennants and a lot of other signs and therefore the city is putting them at a disadvantage when they are being restricted from using those things. There are nationwide sales, such as the recent employee-pricing sale that is advertised using balloons and pennants and if a potential customer drives through Mayfield and sees balloons and pennants and does not in Murray, they deduce that the dealer in Murray is not participating in the sale. The dealership has to buy the pennants and whatever else is

sent by the corporate office. This is not an issue for just car dealers, but should be looked at for all businesses in Murray, not to put them at a competitive disadvantage with other businesses in the surrounding region. Mr. Hurt stated that they are going through the proper channels of Planning Commission and City Council to address these issues, but for tonight there are two very narrow issues: Is this balloon a sign, and is a pennant a sign?

Mr. Hurt stated that the reason it was so important to them tonight is that they will be in court in a couple of weeks regarding the citation, and are potentially facing a fine. Mr. Hurt stated that they will contest the fact that the balloon is a sign in court, as well.

Chairman Whitaker asked Sam Perry what he used to determine that this was a sign. Mr. Perry stated that he used the definition of sign, which it refers to a device which attracts attention to a product or business on site. Chairman Whitaker asked what staff would have done regarding flags of a country, if all the pennants were flags, would they be called signs? Mr. Perry stated that staff would consider them signs, but that they are permitted under "Signs permitted in all zones and districts—the flag or insignia of any nation, state or city." Candace Dowdy stated that since September 2001, Mayor and City Administrator have instructed staff not to prohibit the use of American flags on car lots. Mr. Perry stated that staff has prohibited the use of American flag pennants on every single car on a car lot, maybe 100 or more on a lot, because that is an abuse of the allowance for the exclusion of the "flag or insignia of any nation, state, or city" from being prohibited. Scott Seiber then proposed the question, "When does it cease being patriotism and become promotion?" George Stockton asked if a balloon had an American flag on it, what would it be. Ms. Dowdy stated that it would not be considered a flag.

Ms. Dowdy reminded the board that staff was also looking for answers. Staff is interpreting the zoning ordinance and sign regulations the same way that they have been interpreted for 15-20 years. Staff is not saying that there are not some issues that need updated or changed. An American flag would be interpreted to be permitted in all zones and districts, but using an American flag on every single vehicle would be a bit extreme. Typically, if balloons are being used at a business, a visit is made and the business is asked to remove them immediately.

Scott Seiber asked how long the zoning ordinance had read this way. Ms. Dowdy stated that it was at least since the early 1980s. Mr. Perry stated that the only part that is new, since 1980 in this section, that addresses balloons, is the addition of "no tethered or inflatable balloons" which are interpreted to be the very large animals and other objects. Mr. Perry showed a slide of a very large tethered balloon taken at DTCCG recently.

Mike Pitman reminded the board that Mr. Hurt and DTCCG are presenting the fact that they do not believe the balloon and pennant brought forth tonight fall under the definition of sign, as read:

‘Any name, identification, description, display, illustration, or device which is affixed to or represented directly or indirectly upon a building, structure or land, in view of the general public, and which directs attention to a product, place, activity, person, institution or business.’

That is the one and only narrow issue upon which they are appealing tonight. Mr. Hurt confirmed that was true. Mr. Hurt stated that staff has to get over two hurdles: (A) interpret that these items are signs and (B) that they are moving, flapping or rotating. Mr. Hurt stated that is how staff has to stretch the ordinance and most citizens in Murray would agree. Chairman Whitaker proposed the question to Mr. Hurt: Is a balloon a device? Mr. Hurt stated that he did not know, that this interpretation could be taken to the furthest extreme, because the term "device," is very broad. Mr. Hurt stated that almost anything, in that case, could be a sign, even the license plate on the front of the car. Mr. Hurt stated that is what they are requesting, an interpretation of whether these two items are signs or not.

Chairman Whitaker swore in Dwain Taylor. Scott Seiber asked Mr. Taylor if he had been involved in any of or was aware of the changes and revisions to the sign regulations, since the 1980s, including the recent sign committee meetings and public hearings within the past year. Mr. Taylor stated that he never recalled there being an issue with balloons before and that he had always followed the regulations for signs and gotten permits that were necessary. Mr. Taylor stated that city staff have been very efficient and been out to see him very quickly after they had put up balloons. Mr. Taylor stated that the fact that balloons do attract attention is the reason that they are used. If there were two businesses selling the same products, and one was using balloons, you would probably buy the product from the business using balloons. Mr. Taylor asked a representative from Cain's Chrysler if he had to remove flags. The gentlemen responded saying that he had flags on his front line of vehicles and they had to be removed. Trip Purdom, from Brandon Auto World stated that he is currently using flags but did remove balloons.

Mr. Seiber asked about advertising materials that are sent by the GM corporate office that the dealer has to pay for, but can not use in Murray. Mr. Taylor stated that GM bills them for all the materials they send, regardless of whether they want them or not. Mr. Seiber stated that there had to be communities with stricter sign ordinances than Murray. Mr. Taylor stated that the corporate office can not believe that they can not use them. Mr. Taylor stated that he did not know of a town that a car dealer could not put up balloons except Murray. Mr. Seiber asked when the marketing of car dealerships changed, that he had noticed more of it in the past 10 to 15 years. Mr. Taylor stated that they have been doing the same type marketing for many years, but the ordinances have just gotten stricter. Mr. Taylor stated that when they have a special sale, they like for people to know about it. Mr. Seiber stated that there are some stores in Murray that have some type of special sale every single day and that does not seem effective. Mr. Taylor stated that they have found that some form of change gets people's attention. If the balloons were used all the time, it would not be effective. Mr. Seiber asked if balloons and pennants were the most important component of his business. Mr. Taylor stated that it was important, but not the most important. Mr. Seiber asked how often his business would put up balloons, if they could. Mr. Taylor referred to Sheila Nance, employee of DTCG. Ms. Nance stated that they would put them up every Saturday if there is no special sale going on, since folks are out shopping on weekends, or just during the duration of a special sale, which might be three (3) days. They would also like permission to put them up during promotions that they have spent thousands of dollars on. They would not want to use them every day during a 30 day period. Ms. Nance stated that it was a laborious process inflating and putting up the helium balloons.

Chairman Whitaker directed the board back to the interpretation of a sign. George Stockton asked how often DTTCG receives balloons that have Chevrolet or GMC written on them. Ms. Nance stated that it does happen occasionally, but usually on banners. Harold Hurt stated that if every town across the country had the same ordinances, GM would probably not send all the banners and other advertising materials. Dwain Taylor stated that getting the employees together to blow up balloons excites them about the sale. Chairman Whitaker asked if anyone else had any comments.

George Stockton asked if it was a concern about the size of the balloon or how high it flies. Chairman Whitaker stated that the type of balloon was not as much of a concern as whether it was a sign or not. BZA is interpreting if it is a sign and whether it is moving, flapping or rotating. Mike Pitman stated that all the board has to decide is whether balloons are signs under that definition.

Scott Seiber stated that his dilemma is not whether the balloon and pennant brought tonight fit the definition, because, if interpreted broadly, they could. However, too often the BZA and Planning Commission are seen as anti-business because of the strictness of the zoning ordinance. It is difficult to look at these items and not consider that these people are in business to make a living. They hire employees, who pay taxes and are the bedrock of our community. The two can not be separated. It is important to Mr. Seiber that the businesses represented tonight be successful. It is not a simple answer and he can make a case either way. As far as defending Mr. Perry, Mr. Seiber stated that Mr. Perry made a good decision, based on the information that is contained in this ordinance. Mr. Seiber feels that the danger could be looking at this situation with too narrow of an interpretation without considering the community as a whole. Mr. Seiber stated he is inclined to err on the side of allowing businesses to have these kinds of displays at least for certain periods of time. He does not want to see them up on a day to day basis, because they lose their effectiveness and they can become an eyesore after awhile.

Chairman Whitaker asked for a motion. Candace Dowdy stated that it would be difficult for the Planning Commission to establish guidelines that related specifically to car dealers. If that was done, it would probably be difficult to try to enforce the zoning ordinance. Ms. Dowdy commented that aesthetics are also considered by the city, when establishing the zoning ordinance and the question has to be asked: Do we want to see pennants and streamers, etc along all the commercial corridors of Murray? Maybe a compromise can be to allow it certain times of the year. Ms. Dowdy does not think that some type of frequency can be avoided for permitting the use of temporary signs. It is very difficult for staff to enforce. Harold Hurt, speaking from the audience, asked if the city was going to prohibit balloons for birthday parties. Staff and BZA replied, stating that was not a business. Helen Spann stated that she did not see in the definitions of signs, where a balloon was listed. Sam Perry stated that the only place where balloon is mentioned is the new amendment referring to tethered balloons. Ms. Dowdy stated that topic is what the staff and public are requesting the board to interpret. Ms. Dowdy stated that staff does not have time to go out and patrol the city. Some of these items are actually brought to staff's attention by other city employees. It would be much easier if there was text referring specifically to party type balloons, stating that they were permitted, and then the issue would be resolved. At this time, it is not for staff to decide.

Sam Perry recommended to the board to keep in mind that whatever interpretation is made tonight, it would take some burden off the board to know that the interpretation would be for the text, the way it is at this moment, and not be as concerned about the long term effects of the decision. The zoning ordinance can be updated and amended as a result of the Sign Committee taking a closer look at these requests for amendment and bringing recommendations to the Planning Commission for public hearing.

Dwain Taylor stated that signs always say something, such as road signs. Chairman Whitaker stated that the board is spending a lot of time on this topic and needs to make a decision. Chairman Whitaker stated that Sam Perry interpreted that these items are devices and they direct attention to a product, therefore it is a sign. Chairman Whitaker stated that Mr. Perry further stated that it was a moving, flapping or rotating sign, so it is prohibited. Is he right? Helen Spann stated that if he is right, than 90% of the businesses in Murray have been in violation. Mr. Perry stated that they do not come before the board because staff goes out to the businesses and request their removal. Mr. Perry reminded the board that if temporary signs that are in violation are brought to staff's attention, then the businesses are contacted to correct the matter. Ms. Spann stated that car dealers just happen to be unique in their business and their product is displayed outside.

Mr. Stillwell, from Cain's Chrysler, came forward and named several community organizations, such as Red Cross and Calloway County Fair and many others that have signs all up and down the highway, yet car dealers get singled out just because they want someone to look. Mr. Stillwell does not feel that he is playing under the same rules. Sam Perry stated that community organizations are permitted to have temporary signs, as long as they post a deposit for removal of the sign within two (2) weeks. Mr. Perry stated that it may have the appearance that car dealers are being singled out, but community organizations are not businesses. Mr. Stillwell stated that he did not have a problem with getting a temporary sign permit for special events. Mr. Stillwell stated that he has been doing this type of business since 1969 all over the country and to simply say that they can not use these type advertisements goes against the fact that people expect to see a little different atmosphere due to the fact that they do have products outdoors and not simply in a mall location somewhere.

Trip Purdom came forward and stated that they would not be here tonight if business was going great. If Mr. Taylor and others had all of their repeat customers that they used to have many years ago, things would not be so difficult. Mr. Purdom stated that business was tough and they were simply trying to help themselves.

Chairman Whitaker asked for a motion. Chairman Whitaker asked the board to determine if these two items were signs. Sam Perry interpreted these items to be signs and because of the fact that they blow around in the wind, they are considered moving, flapping or rotating signs. Did he interpret the ordinance correctly? That's all that has to be decided tonight. Whether they are singled out, whether they are going to be allowed in certain places for certain times is all going to be decided later by the Planning Commission. Scott Seiber stated that he hated to say it for the sake of the business, but he thinks that Mr. Perry was correct. Mr. Seiber would like to see changes made to allow

car dealers to do more than they do, to be as effective as they can be. If there is improvement to be made in that area, then let the city make improvement.

Darren Jones stated that he agreed with Scott, that he does think that changes do need to be made to be more descriptive in some areas of the ordinance. Based on the definition of a sign, of which Sam Perry had the citation issued, he made the right decision.

Darren Jones made a motion that Sam Perry, zoning official, made the correct decision, based on the citation that was issued. Scott Seiber seconded the motion. Mike Pitman recommended that, although the motion may be similar, the board should clearly state whether a balloon is correctly interpreted to be a sign or not. **Darren Jones amended the motion to state that under the definition of sign, which reads:**

Any name, identification, description, display, illustration, or device which is affixed to or represented directly or indirectly upon a building, structure or land, in view of the general public, and which directs attention to a product, place, activity, person, institution or business,

a balloon and an antenna pennant (evidence physically brought before the board this night) are signs which are moving, rotating or flapping and that Sam Perry made the correct decision in interpreting the current City of Murray Zoning Ordinance. Scott Seiber commented to the public that although the definition for sign may be broad, it is the board's role to allow variances and conditional uses from the zoning ordinance, in a way that is not damaging to the surrounding community, not to write the ordinances and make policies; and he believes that these are signs under a strict interpretation. Chairman Whitaker asked if there was any further discussion. **Being none, the motion carried with a 4-1 vote. Helen Spann voted no.**

Public Hearing For Conditional Use Permit For Outdoor Storage Of Merchandise In A B-2 Zoning District—Maley Lawn & Landscape Services, Inc.—Chris Maley: Candace Dowdy stated that Maley Lawn & Landscape Services was located at 512 South 4th Street. The property is zoned B-2, in which outdoor storage of merchandise is a conditional use. Ms. Dowdy stated that there have not been any complaints, but staff noticed that Mr. Maley had placed nursery stock outside, to the side of his business. The nursery stock area is 50' front the South 4th Street right-of-way and encompasses a 60' x 40' area for a total of 2400 square feet. Outdoor storage is required to be kept at least 25' from the right-of-way. Mr. Maley was contacted by phone and was happy to come in and apply for the conditional use permit. There is an auto body shop directly to the rear, but there is no blockage of access for traffic to that area. Mr. Maley is not selling this merchandise; he is simply keeping it on hand for his landscaping customers. Scott Seiber asked if it was simply a matter of convenience for him to store items there. Ms. Dowdy stated that it was convenient for him to keep items on hand for jobs. Chairman Whitaker questioned if it was a seasonal business. Sam Perry stated that he operates about 10 months of the year. Ms. Dowdy presented slides of the business and storage area. Mr. Perry stated that the mulch pile is kept in the very rear of the property, almost back to the tree line. Chairman Whitaker asked if the request included permission for the mulch pile. Mr. Perry stated that it really was not, because that pile is really not in view of the public. Ms. Dowdy stated that staff did not have a real problem with the conditional use permit.

Ms. Dowdy stated that generally Mr. Maley does not have walk-up customers and that most of his business is done by referrals and phone calls. Mr. Perry stated that the 60' x 40' measurement included some area that had no stock in it. The measurement was taken of an area as if the building lines were extended in a rectangular fashion.

Chairman Whitaker opened the public hearing. Chairman Whitaker swore in Chris Maley. Chairman Whitaker asked Mr. Maley if he would have plants outside for 10 months out of the year. Mr. Maley stated that he would not, that they would be taken to an off-site location and if there was anything left over, than it would be put under winter landscape blankets and bedded down for the winter. Mr. Maley stated that their season runs from March 15 to January 15. Mr. Maley stated that they are service contractors. He stated that they do complete landscape installations and they will go to one of several different nurseries and might pick up enough plants to do three (3) or four (4) jobs. He has no interest at this time in setting up a garden center or nursery. Mr. Maley stated that they do not leave anyone at the office that would be able to handle sales; that they are out and about. Chairman Whitaker asked if the 40' x 60' area suited him. Mr. Maley stated that it would be sufficient, and there may be a time when he would come to get permission for some further areas, because it is an expansive property. Chairman Whitaker asked if there was anyone else who would like to speak; being none, Chairman Whitaker closed the public hearing.

Scott Seiber made a motion to approve the conditional use permit for outdoor storage of merchandise with the condition that it be limited to a 40' x 60' area in the present location. George Stockton seconded the motion and the motion carried with a 5-0 vote.

Dimensional Variance Request For One Additional Wall Sign—America's Mattress—944 South 12th Street—Scott Vaughn: Sam Perry stated that this was a variance request for an additional wall sign at 944 South 12th Street, which is in Bel-Air Shopping Center where DMT Furniture and Rite-Aid used to be. Mr. Scott Vaughn is going to be opening a mattress store called America's Mattress. Mr. Perry presented a slide of the storefront and explained how much of the front of the building that America's Mattress was going to use. The way that the building is designed, the logo and lettering that he would like to put up would not fit, so it will have to be separated into two (2) signs. Mr. Vaughn would like to place a wall sign logo in the gable area that says America's Mattress, which would be 32 square feet (4' x 8') and lettering which would be 33 square feet (1.5' x 21.5'), which would say America's Mattress. The total square footage that is allowed, if there were one (1) sign is 115 square feet, based on the storefront being 18' wide and 62.5' wide. If the two (2) signs were added together, that would still leave a remainder of 51 square feet not being used; however the zoning ordinance only allows one wall sign. If it were a corner lot, it would be allowed two (2) wall signs. Each sign is about the same size, with the grand total being 65 square feet. Chairman Whitaker asked why 115 square feet was allowed. Candace Dowdy stated that this storefront is over 100 feet from the public right-of-way, so it is allowed the additional 5%. Sam Perry stated that the storefront measurement is taken from the roofline to the ground. Mr. Perry stated that the logo sign in the gabled area would be internally lit, and the channel lettering would not be. Helen Spann asked if they would both say the same thing. Mr. Perry stated that he was under that impression, except that the logo sign would

have the addition of the graphics for the logo. Mr. Perry presented a picture of the logo of America's Mattress.

Chairman Whitaker swore in Scott Vaughn. Chairman Whitaker asked if the lettering would be the same size and color as the sewing center. Mr. Vaughn stated that it would. Chairman Whitaker asked what the purpose of having two signs that said the same thing was. Mr. Vaughn stated that they are small signs for being so far back, and that one is internally lit. He is trying to catch the attention of the Sirloin Stockade customers, because they will be there at night. Mr. Vaughn stated that it was a really small sign in comparison to Fred's, Peddler's Mall, Sears and some of the others. Sam Perry stated that 72 square feet (4.5' x 16') would be what would fit if the entire space in the gabled area was used. Mr. Vaughn stated that because of the shape of the logo, the entire space can not be used. Scott Seiber asked what kind of mattresses would be sold. Mr. Vaughn stated that it would be a Serta-only dealer. Mr. Vaughn stated that most of the 450 America's mattress stores around the country are in metro areas. Mr. Vaughn has looked at opening in about a dozen cities, and he chose Murray because there were no sleep shops in town. There is a definite need in Murray and he is excited to be here.

Scott Seiber made a motion to approve one additional wall sign, based on sizes presented, and that it will not adversely affect the public health, alter the essential character of the general vicinity, will not cause a hazard or nuisance to the public and will not allow an unreasonable circumvention of the requirements of the zoning regulations. Darren Jones seconded the motion and the motion carried with a 5-0 vote.

Attorney Mike Pitman left the meeting.

Dimensional Variance Requests For Wall Signage And 15 Parking Spaces—1410 North 12th Street—Automated Direct Mail And Retail Suites A-F—Jeff Sparks: Sam Perry stated that a six (6) space parking variance was granted for this property on May 2, 2005. Mr. Perry stated that it was previously the Heilig-Myers building and is now owned by Jeff Sparks, of Automated Direct Mail (ADM). They have recently moved from their Spruce Street location and are now using the rear 2/3 of the building. The original plan was to have six (6) retail spaces in the front for lease, which would require the building to be divided up. At some point several months later, there was a joint venture with Exercise Room, currently located on Chestnut Street, where the YMCA was previously located. Based on the parking requirements, a six (6) parking space variance was needed. The variance was granted based on the fact the after hours parking would be opened up after the ADM employees went home for the day. Since that time, they have decided to go back to the original plan of six (6) retail spaces. The six (6) parking space variance does not apply because the use of the property is changing. One of the retail spaces is intended to be used for a café or restaurant. The restaurant increases the parking spaces more than a retail space would, being 19, for a 1700 square foot space. Mr. Perry stated that Mr. Sparks is leaving it up to the tenants to determine if they would like to lease more than one (1) space or not. Seventy-three (73) parking spaces are what are required by the zoning ordinance. Fifty-eight (58) are provided.

Mr. Perry stated that Mr. Sparks is also requesting a dimensional variance on wall signage, partly due to the fact that when staff calculated the allowable wall signage, the measurement was taken from Frontage Road, not from U.S. 641. Since it is less than 100 feet from the Frontage Road right-of-way, than the signs will have to be kept under 5% of the storefront square footage. Mr. Perry stated that it is over 100' to U.S. 641. The front of the building will be changed so that the front building wall height is all the same. The allowable square footage for each of the six (6) retail spaces would be 33 square feet. Mr. Sparks is requesting to use 66 square feet for each storefront, which would need a 33 square foot variance. Mr. Sparks would like to request a variance for all six (6) storefronts at the same time to reduce paperwork and the amount of times that businesses would have to come back and request more variances. Mr. Perry stated that the wall sign variance requests are for Suites A-F. Suite G is for ADM, of which the entrance is on the north side of the building. Mr. Perry showed slides of the building and site. Mr. Perry presented the same site plan that was presented in May, which showed 58 parking spaces. Mr. Perry stated that there was room to maybe add a few spaces to the existing parking lot, with some reconstruction, but there were no plans for that at this time. Mr. Perry stated that there was also discussion regarding the adjacent property owner of The Village allowing parking on their lot, but nothing was ever decided. Mr. Perry stated that is all the information available, there is not a picture of a proposed sign, nor a new site plan showing more planned parking. George Stockton asked if vehicles could park along Frontage Road. Mr. Perry stated that they would probably be prohibited some time in the near future, but at this time, there was no ordinance against parking on Frontage Road. Candace Dowdy stated that in the past she has seen this building used temporarily for a kid's consignment store and that vehicles were parked on both sides of Frontage Road making it difficult to pull out.

Chairman Whitaker asked the board to consider how to determine whether 15 spaces could be varied at this site. Candace Dowdy explained that the restaurant parking space requirements are one of the more restrictive classifications next to retail. Helen Spann asked what type of restaurant Mr. Sparks would put in this building. Sam Perry stated that he would recommend that if the board did take action on this item, that they could put restrictions on the hours of operation and type of restaurant, since that is the highest parking requirements. A restaurant that requires a lot of parking, in the evening hours, may not be safe for the site. Chairman Whitaker swore in Jeff Sparks. Chairman Whitaker asked Mr. Sparks what types of businesses would be in the building. Mr. Sparks stated that he did not know at this time, that he would simply like the building full, but that they would most likely be retail-type businesses. Scott Seiber asked Mr. Sparks what type of restaurant would be in the building. Mr. Sparks stated that it would be more of a café-type: sandwiches, salads, pastas and drinks such as coffees, cappuccinos and lattes. There would be no type of grill. No cooking of any food that would require a hood/vent or grease trap. Mr. Seiber asked if alcohol would be served. Mr. Sparks stated that it would not. The café would not only serve the retail shoppers there, but also be one of the closest places for folks from the industrial park to come get a sandwich for lunch. Scott Seiber asked if it would be carry-out. Mr. Sparks stated that it would be carry-out, but also some seating. Mr. Seiber stated that the parking problem can be solved by the number of seats. Mr. Seiber stated that there could be times during lunch or the evening meal, where there could be very high numbers of patrons at the café.

Darren Jones asked how many employees ADM had. Mr. Sparks stated that at the time of the first variance in May, there were 18. Counting part-time employees, that number has now increased to 22. Mr. Sparks stated that they will be adding an evening shift that will start about 5:00 p.m. and go to 10:00-11:00 p.m. The additional employees will be working the later shift. The trucks will be primarily backed to the loading dock, so an actual parking space would not be used. Scott Seiber asked Mr. Sparks how many businesses that he foresees in this space. Mr. Sparks stated that their plans are to subdivide the storefronts into six (6) individual spaces with each having a separate entrance. Mr. Sparks stated that this property has no room to expand because the lot is either building or parking area. Mr. Sparks stated that there is some space along the south property line to add a few parallel parking spaces. Mr. Sparks stated that the production staff would prefer to come in on the south side of the building, because their work area is on that side. Mr. Sparks stated that he would want any employee of the retail spaces to park on the north side, so spaces could be left open for their customers. Mr. Seiber stated that there was discussion of him being adverse to parallel spaces along the south property line. Sam Perry stated that Larry Crouch had mentioned that as a safety concern in the May meeting. Mr. Sparks stated that he had no problem with it, citing his previous comments about production employees. Mr. Seiber asked how trucks were going to get into the property; if they would have to pull into the front parking lot, and then back all the way to the loading dock. Mr. Sparks stated that he did not know how his employees were backing up to the dock. Mr. Seiber stated that he could see it being a problem with the parking lot being full. Mr. Sparks stated that the aisle in the front parking lot is at least the required width. Mr. Sparks agreed that trucks could pull into the front lot and back around to the side loading dock. The loading dock is two (2) bays. Candace Dowdy asked Mr. Sparks if he was able to work out anything with the adjacent property owner to acquire any additional area for parking. Mr. Sparks stated that was a possibility but he has not been able to speak with Ms. Miller recently. Mr. Seiber stated that it would be better if he had enough of the adjacent property to be able to pull the trucks in to the south, avoiding the front parking lot, then they could back up to the loading dock. Mr. Seiber recommended striping off an area, as no parking, for loading only.

Darren Jones asked how many square feet each of the six (6) retail spaces would be and how many parking spaces are across the front, right now. Candace Dowdy stated that there were 17 spaces, including the two (2) handicap-accessible. Mr. Sparks stated that the retail spaces are about 1750 square feet each. Sam Perry stated that would be a requirement of about nine (9) spaces each. Mr. Sparks stated that they have virtually no walk-in customers. Their business is done over the phone, fax and email. George Stockton asked if there was a possibility for additional parking behind the building. Mr. Sparks stated that there was not, because of the mobile home park. Mr. Perry asked Mr. Sparks if he would consider putting some parking requirements in the lease agreements for the retail spaces. Mr. Sparks stated that he would. Scott Seiber stated that it would be a necessity. Darren Jones stated that since there are only 17 parking spaces for six (6) businesses, if a customer was trying to go to a shop on the south end and all the spaces were full, they may not want to park on the north end of the building. Mr. Sparks stated that he would compare that problem to the downtown court square.

Chairman Whitaker stated that there has to be parking for six (6) retail stores, their employees which would be at least two (2) and also their customers. Chairman Whitaker stated that the result is a very tight parking situation. Mr. Sparks agreed and stated that they could add three (3) new spaces. Scott Seiber asked what type of delivery trucks come. Mr. Sparks stated that they are primarily box trucks and occasionally there are semis that come to the loading dock. Mr. Seiber stated that parking along the south property line would be a problem with semis backing up to the loading dock. Helen Spann asked how the retail store would get their merchandise deliveries. Mr. Sparks stated that their deliveries would be through the individual store front doors. Mr. Sparks stated that ideally he would own at least a portion of the Miller property, which is now a grassy area, for parking purposes.

Chairman Whitaker stated that he was on the board when the parking variance was approved for Heilig-Myers and now it is coming back to haunt the board because the site is well-suited for a furniture store, but when that use changes to retail stores, the parking requirements are much higher. A furniture store does not have much walk-in traffic or employees compared to the square footage that is used. Customers will move on to another store if they have trouble parking on site. Chairman Whitaker stated that with the possible prohibition of parking on Frontage Road, a very tight parking situation exists for this site. Scott Seiber agreed. Mr. Sparks stated that parking probably would not work on the right-of-way because of the sloped ditch in front of the property. Scott Seiber stated that the city would like to help solve this problem, but if the businesses are successful, and there are excessive parking problems, customers are likely to park on Frontage Road or simply leave. Sam Perry asked the board what they thought about having a crosswalk across the grassy area to The Village paved lot, if Mr. Sparks got permission to have at least 15 spaces. Chairman Whitaker and Mr. Seiber agreed that there would then be no problem. Mr. Perry stated that the only approval would be for off-site parking. Mr. Seiber stated that the only downside would be if the property sold, parking permission would have to be granted by the new owner. Mr. Seiber stated that the additional parking space could be reserved for employees of ADM. Chairman Whitaker stated that a customer is not going to park in The Village parking lot to shop at one of the retail stores.

Scott Seiber stated that he would not feel comfortable granting that large of a variance not knowing what types of retail stores would be located there. Mr. Seiber asked if any other board members disagreed with that. Chairman Whitaker recommended tabling the item until Mr. Sparks can come up with some other ideas. Chairman Whitaker recommended requiring that the retail store employees park in The Village lot. Mr. Seiber also recommended acquiring the grassy area either as lease or purchase and paving it for parking. Mr. Sparks stated that he did not have a problem with the board tabling the item until he can talk to Ms. Pat Miller. George Stockton asked what the possibility of leasing some land from Riviera Courts was. Mr. Perry stated that it was zoned residential and could not be used for business parking. Darren Jones asked if property to the north was available. Mr. Sparks stated that the parking lot goes right up to the property line of Riviera Courts. Mr. Jones stated that the board is sympathetic with the parking problem, but just does not see how to work it out with the current situation. Mr. Seiber stated that he would table it until he could come up with some other ideas. Mr. Sparks asked if the board could take action on the wall sign variance.

Scott Seiber made a motion to table the dimensional variance request of 15 parking spaces until the applicant can plan more on-site parking or acquire permission for additional off-site parking. Darren Jones seconded the motion and the motion carried with a 5-0 vote.

Sam Perry reminded the board that Mr. Sparks is requesting a 33 square foot variance for each of the six (6) wall signs. Mr. Perry stated that this would be based on the fact that there would be a separate retail store in each of the six (6) spaces. The total square footage of each sign would be 66 square feet. Mr. Sparks presented a sketch comparing the difference between a 33 square foot sign and a 66 square foot sign. With the front building wall extended, each of the store fronts would be 30' wide x 22' tall (660 sq. ft.). Because the building is less than 100 feet from Frontage Road, 5% is all that is allowed for wall signage. Mr. Sparks asked the board to allow him 10% for wall signage, considering that the measurement be taken from U.S. 641, which is where the majority of the traffic is. Mr. Sparks stated that vehicles travel at 55 MPH in that area, which makes it harder for them to see the signs, in addition to the distance from U.S. 641. Mr. Sparks asked for a blanket variance for each sign, so that each tenant would not have to come before the board separately. Candace Dowdy asked Mr. Sparks if he was planning to require that each tenant have the same size sign. Mr. Sparks confirmed and stated that he had channel letters in mind, similar to Shoppes of Murray. The permitted total square footage is 198; the requested square footage is 396, which is a 198 square foot variance request. Mr. Sparks stated that blocks will be put on the front of the building, making it all uniform. Helen Spann asked if there was anything that would designate one shop from another. Mr. Sparks stated that it would be the sign and that each would have a separate entrance. Darren Jones stated that the front wall of the building is 180 feet wide, which means that approximately half of the overall width of the front would be signage.

Helen Spann asked if Mr. Sparks was planning to erect a freestanding sign. Sam Perry stated that there is a freestanding sign that exists and that it is nonconforming due to the new regulations calling for monument-style signage. Mr. Perry stated that the nonconforming freestanding signs are one topic that is going to be brought up at the sign committee meeting. Mr. Perry stated that the planning department was putting Mr. Sparks on hold until something can be worked out regarding issuing sign permits for nonconforming signs. Heilig-Myers was given a variance of 20 square feet in March 1996 because the lower reader board put the sign 20 square feet over the maximum of 80 square feet that was allowed. Chairman Whitaker stated that it could be decided tonight so he could start right away with his signage. Candace Dowdy stated that the new ordinance allows a maximum of 80 square feet for shopping malls and businesses behind frontage roads, with the maximum height not to exceed 14 feet. An individual business, not behind a frontage road, under the new ordinance for the 12th Street Corridor would be allowed a maximum of 55 square feet with the overall height not to exceed ten (10) feet. Scott Seiber agreed that the board could deal with the freestanding sign tonight. If the requested variance is granted for the wall signage, then the freestanding sign will have to be removed. Mr. Sparks stated that businesses are normally allowed to have both freestanding and wall signs. Mr. Seiber stated that the city is in the process of trying to eliminate the freestanding signs on 12th Street and require monument-style signs and this is an opportunity for that to happen. Chairman Whitaker stated that if he would like to erect an 80 square foot monument-style sign and keep the wall signage to 33 square feet,

there would be no need for a variance. Mr. Sparks stated that he had his own opinion on the monument-style signs. Mr. Sparks questioned why the board was making the restrictions on the freestanding sign be part of the request for wall sign variances. Chairman Whitaker stated that he would not be in favor of allowing the wall signage to be doubled and also grant a variance on the freestanding sign. Mr. Sparks stated that he was not aware that the freestanding sign was even going to be considered tonight. Mr. Perry stated that they had discussed that it was nonconforming. Mr. Seiber recommended that the board deal with the sign variances after an updated elevation drawing is submitted. Mr. Perry stated that this project has gone through so many changes and that the city has not been kept up to date. Mr. Seiber stated that the parking variance was also tabled, and recommended that the board deal with all requested variances at the same time when the proper drawings have been submitted. Chairman Whitaker stated that a lot of time would be saved if all the information would be provided and the property owner was clear on what they were going to do before making a request for a variance. Mr. Sparks stated that the variance request was for wall signage, not for freestanding signage. Chairman Whitaker stated that he was not able tonight to make a good decision knowing that the freestanding sign was nonconforming. Mr. Seiber agreed. Chairman Whitaker asked Mr. Sparks to clarify if he wished to use a freestanding sign and what size he would like to use. Mr. Sparks stated that he would like to use what is already there and remove the lower reader board portion that is 20 square feet. Chairman Whitaker asked what the status of the sign ordinance was. Candace Dowdy stated that there was no text referring to a phase out regarding the nonconforming signs on the 12th Street corridor. Mr. Sparks stated that he owned the building before the ordinance was passed in March. Ms. Dowdy stated that even under the previous ordinance, 80 square feet would have been the maximum square footage.

Scott Seiber made a motion to table the dimensional variance request for 33 square feet of additional wall signage for each of the six (6) retail spaces until an elevation drawing of the new building face is presented. George Stockton seconded the motion and the motion carried with a 5-0 vote.

Sam Perry apologized to the board for not requiring more information prior to applications for variances and stated that staff would enforce that requirement.

Dimensional Variance Request For Lot Size And Number Of Parking Spaces—427-429 South 8th Street—Van Childress: Candace Dowdy stated that the planning department received a call from the Post Office inquiring about assigning an address for the downstairs apartment of this location on South 8th Street. When it was researched, it was found that a building permit had been issued for the construction of a garage with one upstairs apartment to be attached to the carport in the rear of the existing home. The lower portion was to be used as a garage only. The original request was for two (2) apartments: one upstairs apartment and one downstairs apartment. He was notified that because of the size of the lot, it did not meet the zoning requirements. The property is zoned R-3, multi-family residential. For three (3) dwelling units, a lot would need to be a minimum of 13,500 square feet. The lot is 12,750 square feet. It was 750 square feet too small for three (3) units. Mr. Childress was sent a letter stating that the downstairs was possibly being used as an apartment and that he would need to contact the planning department to discuss the matter. He was explained that he would need to get a lot size

variance if he wanted to continue using the living quarters downstairs. Mr. Childress informed staff that since 1996 he had developed diabetes and had fallen down the stairs twice and needed to live on the lower level for safety reasons. Ms. Dowdy stated that the zoning ordinance requires two (2) parking spaces per unit. Ms. Dowdy showed slides of the parking area and building. Ms. Dowdy stated that Mr. Childress had informed her that one person lives in the house, and one person would live in the upstairs apartment. Ms. Dowdy stated that the upstairs apartment is for rent and that Mr. Childress would not rent it out until the BZA reviewed it, so he would have the option of moving back upstairs if it was denied. Ms. Dowdy read a conversation log taken by Linda Macha confirming that Mr. Childress was aware of the zoning regulations. A stop work order was issued on the building site in 1996 and Mr. Childress was informed that the downstairs could not be used for a dwelling unit. Mr. Childress agreed to use the downstairs portion for a garage/game room and assured the planning department that it would not be used for rental or living quarters. In November 1998 the BZA interpreted that a house to be moved from Poplar Street to 421 South 8th Street would be required to have the garage with dwelling unit attached so that there would be no dwelling units in the accessory structure. The total number of units at that location was three (3). Mr. Childress's request was handled much the same way, requiring that the garage be attached to the main house. Chairman Whitaker asked what the stop work order was issued for back in 1996. Ms. Dowdy stated that an application for gas service was made and it was indicated that there was an apartment upstairs and an apartment downstairs. At that point Mr. Childress was reminded that the lot was not large enough for three units. Helen Spann asked how many bedrooms were upstairs. Ms. Dowdy stated that there was one (1) bedroom.

Ms. Dowdy showed a picture of the parking area. Chairman Whitaker swore in Van Childress. Mr. Childress stated that his mother passed away in 1994. He moved into the house in 1994 and lived there for two (2) years and decided that he needed some rental property for extra income with social security. Mr. Childress stated that he moved upstairs with intentions of staying up there and lived there nine (9) years. With his health he could not negotiate the steps. Therefore, he is in the process of moving downstairs and hoping that he can rent the upstairs out. Chairman Whitaker asked if he just recently moved downstairs. Mr. Childress stated that he did just recently move. Chairman Whitaker asked if it had just been used as a garage up until that time. Mr. Childress stated that it was and that it was heated and there was a washer and dryer. Mr. Seiber asked what had to be done to make the bottom livable. Mr. Childress stated that it was livable now, but a partition could be added. Ms. Dowdy stated that a bathroom was also downstairs. Chairman Whitaker asked why Mr. Childress why he could not move into the house up front. Mr. Childress stated that he had been successful in renting the house out, he prefers renting the house. Mr. Childress stated that he had a lot of parking space. The board agreed that there was excessive parking for the number of renters and that it was roughly a third of the entire lot. Helen Spann asked if the garage was on separate utility meters. Ms. Spann asked the board if they could approve the variance just for him, as long as he lives, and that no changes be made to the garage door. Mr. Childress was in agreement with that and stated that it was a high-quality insulated door.

Sam Perry asked if that could be done because according to KRS 100.251, a dimensional variance runs with the land. Candace Dowdy stated that conditions have been placed on

variances in the past that were only for that applicant. Mr. Perry stated that usually the planning department does not consider variances running with the land because the use of the land is changing; therefore it does not apply anymore. Chairman Whitaker read KRS 100.251, referring to dimensional variances running with the land and being transferable to any future owner of the land. Ms. Dowdy stated that the zoning ordinance and KRS states that the board may impose any reasonable restrictions or conditions on any variance it decides to grant. Mr. Perry recommended that the board make a motion based on an answer to this legal question. Helen Spann asked if the main reason the variance is being requested is for parking concerns. Ms. Dowdy stated that it was because of lot size and that the parking may not be an issue. Ms. Spann asked how many bedrooms the house was. Mr. Childress stated that it was one (1) bedroom. George Stockton asked if the variance could be made based upon health conditions. Mr. Perry stated that it is recommended that some findings of fact are attached to the variance. Mr. Seiber questioned whether the variance could be restricted to just the current occupant, and not future occupants/owners. Mr. Seiber stated that it is going to change the value of the property if three (3) units can be rented. Ms. Dowdy stated that the property at 421 South 8th was separated into three utility bills by MMU. Mr. Childress stated that he will only rent to one (1) person and one (1) person only. Chairman Whitaker stated that whatever the board does, it will continue for many years and not everyone would agree with the decision. Mr. Seiber stated that whether they approve or not, it will not change the basic face of the property. Mr. Seiber and Ms. Spann both agreed that regardless of the long term, this was a compelling situation and they support it. Ms. Dowdy asked the board what conditions they would like to place on the variance so that if there ever was a parking problem, it could be brought back for review. Mr. Seiber stated that a lot of cars could be parked on the lot. Chairman Whitaker stated that the chance of it becoming a problem in the future is very high. Ms. Dowdy stated that the parking probably could not be laid out in a way so that cars could enter and exit in a forward motion. Mr. Perry stated the problem is that the parking spaces are not designated.

Scott Seiber made a motion to approve the 750 square foot dimensional variance on lot size and a with the conditions that there be no more than three (3) tenants residing on the premises and no more than three (3) vehicles parked on the premises and that the variance be valid only during Van Childress's tenancy on the premises. Helen Spann seconded the motion and the motion carried with a 5-0 vote.

Candace Dowdy informed the board that the Lily's, owners of the Southside Shopping Center, had contracted a painter to repaint the Southside Shopping Center sign, to bring it into good maintenance condition. It is not being modified, simply being freshened up. It is a nonconforming sign, but has been allowed to continue until any ordinances exist that would signify a time that it would have to be phased out completely.

Scott Seiber made a motion to adjourn. Darren Jones seconded the motion and the motion carried with a 5-0 voice vote. The meeting adjourned at 9:15 p.m.