

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, DECEMBER 21, 2005
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, December 21, 2005 at 4:30 p.m. in the council chambers of city hall at 104 North 5th Street.

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

Board Members Absent: Darren Jones

Also Present: Candace Dowdy, David Roberts, Warren Hopkins, Kristen Taylor, Gerald Bell, Don Snodgrass, Kim Adams, Keith Adams, Bill Call and other public audience

Chairman Bill Whitaker called the meeting to order at 4:30 p.m., and welcomed the guests and applicants. Chairman Whitaker requested approval of the November 15, 2005 regular meeting minutes. **Scott Seiber made a motion to approve the minutes as presented with minor typographical changes. Ed Davis seconded the motion and the motion carried with a 6-0 voice vote.**

Dimensional Variance Request For A 6.5' Front Setback Variance For A

Freestanding/Monument Sign—1304 Chestnut Street—University Shops—Gerald Bell:

Candace Dowdy asked the board members if there were any questions in reference to the mailed staff report on this item. Chairman Whitaker asked if there were any photographs to explain that site distance was not a problem. Ms. Dowdy presented site photographs. Ms. Dowdy stated that upon inspection, she did not have to pull the vehicle across the sidewalk to see toward the east before pulling out. Ms. Dowdy stated that there is also a clear line of sight to the west. Scott Seiber asked if there was any foreseeable change in the future that would make visibility a problem, such as widening of Chestnut Street. The planning staff acknowledged that there were no plans as far as they knew. Ms. Dowdy stated that the original site plan did not show a dimension for the sign setback, but did state that the sign would comply. Scott Seiber asked if landscaping would be done in a way that would not interfere with line of sight. Ms. Dowdy stated that the total sign area proposed is 28.5 square feet. Ms. Dowdy stated that a monument-style sign is not required, and that the allowable square footage for this site is the maximum of 80 square feet. Chairman Whitaker swore in Gerald Bell. Chairman Whitaker asked Mr. Bell whether he would use an electronic reader board or not, and what size. Mr. Bell stated that he has not made a decision on that yet, but that if he does use a reader board, it would be a maximum of 10.66 square feet (64" x 24"), with the overall sign area being 28.5 square feet, as stated. The University Shops portion could then be 18 square feet. Ms. Dowdy stated that Mr. Bell could actually use a 24 square foot reader board, because that is 30% of the allowable sign area of 80 square feet. Andy Dunn asked what the reader board would be used for. Mr. Bell stated that his intentions were to avoid a larger sign by using a text message board. Mr. Bell stated that although he has read the sign ordinances, he failed to recognize that the setback

requirement was 10', which staff brought to his attention. Mr. Bell stated that he and others had studied the traffic flow of the site area, to be sure that the sign did not obscure vision in the parking lot as well as on the road. Mr. Bell stated that the entrance was widened to 32' from original plans of 24'. Scott Seiber asked if safety was the reasoning for the sign to be taller than it was broad. Mr. Bell stated that he did not know for sure, but that the architect had gotten some measurements from a reader board at Walter's Pharmacy. Mr. Seiber questioned the landscaping plans again. Mr. Bell stated that he put sod around the sign, but originally had plans for landscaping. Ms. Dowdy read the definition for landscaping. Ms. Dowdy stated that there was room for some low landscaping. Mr. Bell stated that he did not have landscaping plans on paper for the sign. Mr. Bell stated that there is approximately 3-4' of green space on either side of the sign. **Scott Seiber made a motion to approve the 6.5' front setback variance for the freestanding sign at University Shops, 1304 Chestnut Street, based on the facts that it will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or nuisance to the public, will not allow unreasonable circumvention of the zoning regulations and because of findings that: (1) the site view is not obscured by the sign, (2) a monument sign is erected where one is not required and (3) all other sign ordinance requirements are met. This variance is given with the condition that a landscaping plan be approved by planning staff to avoid blocking any view. Andy Dunn seconded the motion.** Chairman Whitaker stated that this variance also allows more visibility within the parking lot which improves safety. Ms. Dowdy stated that the reason the sign was not located near the intersection of 13th Street is because of the 50' clear zone. **The motion carried with a 6-0 vote.**

Dimensional Variance Request For A 35' Height Variance For A Structure In An R-2 Zone—Amateur Radio Antenna—2000 Melrose Drive—Don Snodgrass: Candace Dowdy stated that the property was located just north of Campbell Estates on the northwest corner of Westgate and Melrose Drives. Ms. Dowdy showed sketches of the proposed location of the tower and pictures of the property with adjoining properties. Ms. Dowdy stated that the home is 10' off the side property line, which is the side where the antenna would be located. Mr. Snodgrass owns the vacant lot to the west. Ms. Dowdy presented a photographic rendering of what the tower would look like on the side of the house. The maximum height of a structure in the R-2 zone is 35', and the proposed tower height is 70 feet. Ms. Dowdy stated that the proposed side setback would be less than 10' because the house is already built right up to the minimum setback line. Chairman Whitaker swore in Don Snodgrass. Chairman Whitaker asked Mr. Snodgrass to explain if the FCC was reluctant to specify heights or extend preemption to covenants and restrictions due to the overreaching nature of federal government in local government, as stated in the staff report. Mr. Snodgrass stated that this is the main reason that he is here tonight, because there is not a good understanding of what the federal government has said in regards to the fact that amateur radio operators lend assistance to their communities. Mr. Snodgrass stated that amateur radio operators offer a means of communication with the outside world in a time of disaster when there are no other forms of communication function and also serve as communicators of severe weather spotting information. Mr. Snodgrass stated that a tower of 35' is just as unsightly as a tower of 70'. Scott Seiber disagreed. Andy Dunn asked about camouflaging techniques. Mr. Snodgrass explained the location of trees that would provide screening and that there were already unsightly electric poles in the area. Chairman

Whitaker swore in Bill Call, local amateur radio expert. Mr. Call stated that the Murray area amateur radio group is the most active in western Kentucky and there are about 40 members, some of which are affiliated with Murray State University (MSU). Chairman Whitaker asked what the approximate number of amateur radio towers was in Murray. Mr. Call stated that there were about a dozen within the city. Mr. Call stated that the essence of the FCC statement called PRB-1 is:

“Local regulations which involve the screening or height of antennas based on health, safety or aesthetic considerations must be crafted to accommodate reasonably, amateur communications and to represent the minimum practicable regulation to accomplish the local authority’s legitimate purpose.”

Chairman Whitaker asked Mr. Call what the minimum height tower for effective communications would be. Mr. Call stated that it would be 60-70’ because shorter would have diminishing performance and taller would have diminishing return. George Stockton asked if the potential radio frequency interference (RFI) occurs only during transmission. Mr. Snodgrass stated that it does occur only during transmission, but is more likely to affect adjoining neighbors than properties several blocks away. Helen Spann expressed concerns about citizens being able to find out who to contact if there was RFI. Mr. Call and Mr. Snodgrass explained the organization’s RFI resolution process. Mr. Call stated that Bobby Johnson used to have a similar tower on Parklane Drive and there currently is a similar 60’ tower in the northwest lawn of the Industry & Technology building at MSU. Scott Seiber stated that his tendency is to err on the side of reasonable accommodation. At this point, Andy Dunn recused himself from the discussion by leaving the room, after seeking legal counsel from Attorney Warren Hopkins. After lengthy discussion, Scott Seiber stated that his only reservation is notification of property owners. Much discussion was made on the legality and objective of adjoining property owner notification. Mr. Snodgrass stated that he would like to withdraw his application if adjacent property owner notification is required. He feels that it would be undue pressure on adjoining property owners in addition to the fact that the FCC ruling separates amateur radio from other types of communication towers into a class all their own. Warren Hopkins recommended that research be done into the legality of requiring adjoining property owner notification. **Ed Davis made a motion to table this item until research regarding notification can be presented at a later meeting. Helen Spann seconded the motion and the motion carried with a 5-0 vote. Andy Dunn was recused.**

Andy Dunn re-entered the meeting.

Dimensional Variance Request For 5’ Height And 3’ Front Setback On

Freestanding/Monument Sign at 521 South 12th Street—Singer Sewing Center—Kim

Adams: Candace Dowdy stated that the existing sign, which was Jerry’s Restaurant and also Garden Gate Produce, has not been in conformance for many years, even before monument-style sign regulations. Charlie Adams is the property owner. Singer Sewing Center is planning to relocate here. Ms. Dowdy presented slides depicting the 10’ front setback line being behind the front pole of the sign. Ms. Dowdy stated that the property owner is requesting that a variance be granted which would possibly accommodate the sign structure being modified to fit the monument-style sign regulations, without being totally removed. The front pole would be

removed. The 5' x 15' frame would be modified to be 5' x 10'. Fifty (50) square feet would be permitted. Ms. Dowdy stated that a small setback variance would need to be granted and also a small height variance would need to be granted. Ms. Dowdy questioned if the sign would still be of monument style with the request of the height variance. The overall height of the proposed sign is 15', instead of the maximum of 10'. The alternative would be to cut the existing poles shorter. Chairman Whitaker asked what the status of the sign regulations referring to nonconforming signs on 12th Street was. Ed Davis read what was recommended by the sign committee to the Planning Commission the night before. The recommendation was to grandfather in all nonconforming signs unless there is a business change or a modification to the sign. Chairman Whitaker stated that these signs will continue to be a problem if regulations are not enforced. Mr. Davis stated that the entire sign should have been removed when the last business went out. Ms. Dowdy confirmed that was true and stated that was explained to the property owner. Andy Dunn stated that granting a height variance would be inconsistent with the intentions of the 12th Street regulations. Mr. Davis stated that consistency would be the best approach in addressing these issues. Chairman Whitaker swore in Kim Adams and Keith Adams. Chairman Whitaker asked the applicants what the purpose of 15' height was. Ms. Adams stated that the property owner is requesting the height because of the willingness to remove one pole. Ms. Dowdy stated that the property owner states that the sign would be blocked by Benson's Sporting Goods reader board otherwise. Discussion was made on why previous sign permits were issued for nonconforming signs on 12th Street, citing examples of eSav and El Mariachi Loco, after new regulations were passed in March 2005. Ms. Adams stated that she would be willing to lower the sign, if she was granted the setback variance. Ms. Adams stated that the sign would have a brick base and landscaping. The board was reluctant to grant any variances with only a sketch. Board members recommended submitting plans to the planning department that were within guidelines and avoid the need to return to the BZA. **Scott Seiber made a motion to table this item until a scaled elevation drawing of the proposed sign could be presented. Ed Davis seconded the motion and the motion carried with a 6-0 vote.**

Chairman Whitaker asked if there were any questions or comments.

Being none, and no further business, **Scott Seiber made a motion to adjourn. Ed Davis seconded the motion and the motion carried with a 6-0 voice vote.** The meeting adjourned at approximately 6:10 p.m.

Chairman, Bill Whitaker

Recording Secretary, Sam Perry