

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, AUGUST 16, 2006
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, August 16, 2006 at 4:30 p.m. in the council chambers of city hall at 104 North 5th Street.

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

Board Members Absent: None

Also Present: David Roberts, Mike Pitman, Peyton Mastera, Candace Freeland, Ray Gene Coursey, Mayor Rushing, and 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 July 19, 2006 regular meeting minutes. Peyton Mastera noted corrections to the minutes since the Board members had received the minutes. **Scott Seiber made a motion to approve the minutes with the noted corrections. Darren Jones seconded the motion and it carried with a 7-0 voice vote.**

Dimensional variance request for an accessory structure to be placed in side yard at 502 N. 7th Street – Ray Gene Coursey: Peyton Mastera stated the applicant's name is Mr. Ray Gene Coursey. Mr. Mastera explained Mr. Coursey is applying for a variance because he has constructed a carport to the side of his house at 502 N. 7th Street. The carport is situated 11 feet from the side property line and 65 feet from the road. Mr. Mastera explained the Planning Department was notified of the carport and the City Planner, Ms. Candace Dowdy, notified the property owners they were not in compliance with the city regulations and would have to apply for a variance to keep the accessory structure. Mr. Mastera explained the neighbors to the south of Mr. Coursey (Mark and Emily Kennedy – 500 N. 7th Street) submitted a letter on Mr. Coursey's behalf expressing their support and not opposed to the carport being at its present location. Mr. Mastera stated he had spoken to Mr. Coursey over a week ago and inquired how long the carport had been erected. Mr. Coursey was not sure of the exact time of its placement, but estimated it has been there for 5-7 years. Mr. Mastera explained the roof of the carport matches the roof of the house and is not obtrusive; also, being the carport is 11 feet from the side property line, it will not require a setback variance. Mr. Mastera stated he has looked through previous variances, past minutes, and the BZA index to see if the BZA had approved any carports along N. 7th Street; a few detached garages have been demolished and rebuilt, but no applicants have applied to place a carport along N. 7th. Mr. Mastera stated that Mr. Coursey was unaware of the ordinance requiring him to receive a dimensional variance for the carport and that he is in attendance if the BZA has any questions.

Scott Seiber explained that when Mr. Coursey constructed his carport, 5-7 years earlier, constructing carports was not much of an issue at the time. Chairman Whitaker cited an example along Elm Street from a few years back. Darren Jones asked if the fence shown in the picture

was that of the Kennedys. Mr. Mastera explained it was and that it denotes the approximant property line and clearly shows the 11 feet gap between the side of the carport and the side property line. Mr. Mastera explained this 11 foot gap is evident by the car parked in between the carport and the side property line, as the picture shows. Chariman Whitaker stated the only issue at hand is that the carport is in the side yard, not in the rear of the house.

Drawing upon the discussion from the previous meeting, Mr. Seiber explained his major concern is ensuring the safety of these carports in that they are safely secured to the ground. Mr. Mastera stated he had spoken with a city building official, Mr. Pearly McClure, to gain a better understanding to how these fastened to the ground. Mr. Mastera explained the majority of carports have two beams that run along both sides of the carport. There are notches along the beams to which the posts of the carport slide into, with a pin that is slid in to help keep it secure. Some people choose to put a concrete footer around the base of the carport to better ensure safety. Mr. Mastera stated Mr. McClure was notified of the previous month's ruling in regards to Ms. Sue Cochran along W. Olive Street and that he would inspect the carport upon its erection to make sure it is secure. Mr. Mastera went back to the previous picture that shows the base of the carport in more detail. Mr. Seiber stated he suspects Mr. Coursey's carport is safely secure to the ground, but noted there is a concern on the "front end" of these companies selling the carports to individuals because there is no permit required to guarantee they are fastened down properly. Mike Pitman stated the Planning Commission could create a text amendment that would address similar variances granted and it would entail any accessory structure erected must be done so in a fashion acceptable to that of a building inspector. Mr. Seiber stated he thinks that would acceptable. Mr. Seiber asked Mr. Coursey to come forward to answer a question.

Chairman Whitaker swore in Mr. Ray Gene Coursey. Mr. Seiber asked Mr. Coursey if the carport was secured with bolts. Mr. Coursey pointed to the picture and showed the bolts which were situated near the rear wheels of his car. Mr. Seiber reiterated that this carport is properly secured but would like to see, in the future, an inspection down by a building official. Chairman Whitaker asked Mr. Pitman if in the motion there could be a statement that requires a building official to go and inspect the carport to ensure it is properly constructed. Chairman Whitaker added this allows the BZA to "cover themselves" because there will be documentation the BZA required a building official to inspect the structure to guarantee its safety. Mr. Pitman explained the motion would include the normal findings as well as the condition a building official must inspect the accessory structure to make sure it is properly affixed.

Helen Spann asked if the house was used for rental purposes or if Mr. Coursey lived at the location. Mr. Coursey stated he lives there and the carport was constructed for him. Ms. Spann reiterated her opinion from the last meeting that this structure does not go along with single-family residential requirements in that it does alter the neighborhood.

Mr. Pitman addressed Chairman Whitaker's comment from earlier. Mr. Pitman explained that by placing the inspection condition onto the motion, it would help ensure the safety of the general public. Mr. Pitman also stated the motion would need to be sure to address the other normal findings and by granting this variance, the BZA would be saying this accessory structure

would not cause a hazard or nuisance to the general public. Mr. Seiber explained he would feel bad approving a carport that a wind picks up and hits another person.

Scott Seiber made a motion to approve the Dimensional Variance application at 502 N. 7th to allow an accessory structure to be placed in the side yard with the stipulation a Murray building official inspects the accessory structure to ensure it is securely fastened to the ground and 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 and will not allow unreasonable circumvention of the requirements of the zoning regulations. Ed Davis seconded the motion and it carried with a 7-0 vote.

Chairman Whitaker asked if the issue of carports is something that needs to be brought before the Planning Commission. Ms. Spann acknowledged this is becoming an issue and something needs to be done by educating the public. Mr. Seiber explained that individuals are going to incur additional costs by adding on to driveways (and constructing an actual garage) and is why carports are going up in side or front yards. Mr. Seiber stated the problem one runs into is that a neighbor is not going to object to a carport being at a location, especially if it has been there for multiple years. Ms. Spann stated the BZA has to make concessions based upon different subdivisions and the makeup of the general vicinity. Mr. Roberts stated many of the older subdivisions probably have covenants and restrictions that would address this sort of issue; but, on an individual basis, unless a subdivision collectively acts against an individual there is not a lot the city can do. Mr. Pitman explained an issue the BZA will have later on is when individuals in a newer subdivision come and apply for this same variance and the BZA will have to justify why a carport will not alter the character of one neighborhood, but will another. Mr. Davis asked if the companies that make these carports have to receive a business license so that they can be informed prior to selling one of these carports that they are not allowed to erect one of these in a front or side yards. Mr. Pitman noted the people selling these carports are not the ones constructing the carports; they are contracted out to others. It was also stated by a few Board members there are multiple companies that sell these and will be tough to contact them all.

Mr. David Roberts asked the Board if they want to take something before the Planning Commission that says carports are not allowed at all. Chairman Whitaker stated it would be difficult for the Planning Commission to make such a strong statement as to do away with constructing carports. Chairman Whitaker explained the Board needs to either continue to allow them as they have or “draw a line” and go by the premise that Board will not accept anymore from a certain date forward. Mr. Pitman explained the Board has done a good thing in addressing safety concerns by having a building inspector view each one erected, but the difficult issue is answering is, “will the carport alter the essential character of the general vicinity.” From the previous meeting, it would be difficult to argue the carport Ms. Cochran (West Olive Street) was applying for would alter the essential character of the neighborhood. Mr. Pitman stated the Board will have to look at these on a case-by-case basis or the Planning Commission can include a text amendment which prohibits carports being constructed in side yards. Mr. Seiber explained this will get to the point where the Board will have no control at all over the matter as long as

these are constructed and approved. Mr. Davis suggested putting this on the Planning Commission agenda for next month.

Mr. Roberts stated that if these are treated as accessory structures and only allowed in rear yards, he does not feel it will accomplish anything taking it before the Planning Commission. If the Planning Commission stipulates it is required to place accessory structures in rear yards, they are still going to come before the Board of Zoning Adjustments to receive variances. Mr. Seiber agrees with Mr. Roberts in that people are going to place carports in their most convenient locations, not necessarily in the rear yard just because the ordinance says so. Mr. Pitman stated the Board cannot vary density but the Planning Commission could come up with a text amendment that prohibits carports in residential zones; in this case applicants would still apply for variances but could be ruled against because it would be an unreasonable circumvention of the zoning regulations. Mr. Roberts explained this is a problem and carports are no different from other accessory structures; people will continue to put them up and claim they were unaware of the zoning regulations. Mr. Roberts stated the Planning Department will look at other cities and how they handle the situation. Ms. Spann noted the city is trying to enforce monument style signs and other regulations but to continue to let this slide "is a disgrace." Mr. Roberts noted the Planning Commission can form these types of ordinances and regulations for accessory structures, based upon esthetics. Mr. Roberts suggested the BZA come up with some ideas and present them to the Planning Commission. Mr. Seiber stated the BZA needs to watch their actions as many people cannot afford to build a garage and erecting a carport protects the investments of many people.

Being of no further business, **Ed Davis made a motion to adjourn. Scott Seiber seconded the motion and it carried with a 7-0 voice vote.** The meeting adjourned at 5:10 p.m.

Chairman, Bill Whitaker

Recording Secretary, L. Peyton Mastera