

**MURRAY BOARD OF ZONING ADJUSTMENTS
SPECIAL MEETING
WEDNESDAY, OCTOBER 4, 2006
4:30 P.M.**

The Murray Board of Zoning Adjustments met in special session on Wednesday, October 4, 2006 at 4:30 p.m. in the council chambers of City Hall at 104 North 5th Street.

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

Board Members Absent: none

Also Present: Candace Dowdy, Peyton Mastera, David Roberts, Samuel Elkins, Mildred Elkins, Darren McChristian and public audience

Chairman Bill Whitaker called the meeting to order at 4:35 p.m., and welcomed the guest and applicant.

Dimensional Variance request to place a detached garage in side yard – 1307 Fleetwood Drive – Samuel Elkins: Candace Dowdy began by explaining that the applicants, Samuel and Millie Elkins, reside at 1307 Fleetwood Drive which is lot 65 of Campbell Estates. Mr. Elkins is looking to place a detached garage on the south side of his home for storage of his boat. When the applicant presented a site plan to the planning department they indicated that they also owned a 50 foot lot to the south of their home as well. There was a minor plat approved in 1990 dividing this lot into two tracts of land (lots 64A and 64B). Mr. and Mrs. Elkins own lot 64B. Initially the proposed garage was to be constructed over the lot line that divided lots 65 and 64B. Since the Murray Zoning Ordinance does not allow erecting structures across lot lines, Mr. Elkins had a minor subdivision plat done that abolished the lot line and extended his present lot by 50 feet to the south. The plat has already been recorded at the courthouse. Ms. Dowdy stated the minimum front setback in Campbell Estates is 40 feet. The proposed garage is to be approximately 52 feet set back from the street and 12 feet from the side property line, which meets all setback requirements. Ms. Dowdy explained there was no way for Mr. Elkins could attach the garage to their home on the south end since there was a bedroom and bathroom on that end. The Elkins were not aware it would require a variance to place a garage in their side yard; the proposed garage was called to the attention of the planning staff by Kenny Jackson, building inspector, who noticed stakes in the ground at their home. Ms. Dowdy then presented pictures displayed on the PowerPoint presentation looking at the south end of the property and noting where the stakes are located, showing the proposed placement of the garage. Ms. Dowdy stated that the Elkins did not want to construct the carport to the rear of their property because there is a natural drainage ditch at this location; the prior developer filled in the area with dirt which caused flooding issues at this property and the adjoining property. The Elkins have removed a lot of the dirt which have somewhat eased the flooding problems. Andy Dunn asked if the flooding issues have been resolved. Ms. Dowdy responded by explaining that Mr. Elkins stated there are still some water issues when it rains. The back part of their lot remains wet for a long

time; this is a big reason they did not want to build the garage to the back side of their home. Mr. Elkins brought to the planning staff a conceptual picture of the proposed garage. The exterior and roof pitch of the garage will both match that off the house.

Ms. Dowdy stated that before the meeting, Ms. Helen Spann inquired about the subdivision regulations. Ms. Dowdy read from the subdivision regulations, "No structure shall be erected, altered, placed, or permitted to remain on any portion of said property other than a newly constructed single-family dwelling with attached or semi-attached private garage or carport for automobiles." Ms. Dowdy noted she drove around Campbell Estates earlier in the day and about two houses down on the corner of Melrose Drive and Fleetwood Drive there is a detached garage at that residence and also one on Oakhill Drive which sets back to the rear of the property. The detached garage on Oakhill Drive is used for a larger vehicle, possibly an RV. It is not known if these garages received proper authorization before they were erected. Ms. Dowdy explained the location of both of these carports would not require a variance from the city, but both are detached and not in-line with the subdivision regulations. Mr. Scott Seiber asked if by semi-attached, is it meant a brick wall extension, breezeway, or something similar. Ms. Dowdy stated that in this instance, an attachment of the sort would not be feasible as it would be a door to a garage leading into a bathroom or bedroom. Ms. Dowdy explained that planning staff would have to get with the Murray building officials in determining what constitutes "semi-attached." Ms. Dowdy stated she believes it would have to be something more structural than a twelve foot brick wall joining the two structures to make it part of the dwelling. Mr. Seiber asked where the BZA fits in as far as making a decision that might countermand the subdivision regulations. Ms. Dowdy stated that she explained to Mr. Elkins they may have to get permission from the developer to place this detached garage in their side yard. David Roberts stated that if the variance is granted it would be with the stipulation it not be supplanted or circumventing the subdivision regulations.

Chairman Whitaker asked Mr. Roberts if he has looked at the drainage issues on this property. Mr. Roberts stated that he had and that it is something that has been an issue for years. Mr. Roberts explained that since there are no drainage easements along the lot lines, that he is aware of, it becomes a private property issue. Mr. Roberts stated the water does drain from the back of the house on the east side to the southwest portion of the house and property. Although the pictures do not show it, there is a swell that directs the water where it does. Mr. Roberts indicated there will be no way to divert all the water away from the garage. Andy Dunn asked if it would be possible to place a drop-box in and pipe the water under the driveway if the garage was moved further back. Mr. Roberts stated he has not looked at it that close but it could be a possibility.

Chairman Whitaker swore in Mr. Samuel Elkins, property owner and Mr. Darren McChristian, contractor. Mr. Elkins explained that Mr. McChristian and his wife, Ms. Mildred Elkins, got together and decided that this location to the south of the property would be the best place to construct this garage. Mr. Elkins explained that at one time there was approximately 50 truck loads of dirt placed on the lot south of his property because the owner at that time was trying to sell it. The excess dirt caused flooding on Mr. Elkins' property, in particular to the rear of his property. Once the property was purchased by Mr. Elkins and his adjacent property owner there

was approximately 41 truck loads of dirt removed; some of the flooding has subsided, yet some still remains. Mr. Elkins stated that there is a state law that says you can not change the flow of water on your property causing flooding to an adjoining property and if they build the garage in the back it will block the flow of water on their property and cause flooding. Mr. McChristian reiterated what Mr. Elkins had stated there would be no way it could be built in the rear yard because of the water that constantly flows to that area of the property. Mr. McChristian acknowledged the idea of building a drop-box would not be conducive as the garage would have to be raised up substantially for it to work. Mr. Seiber asked if the garage will be elevated enough to keep water from coming into the garage. Mr. McChristian explained it would be high enough and no water would enter the garage. Mr. McChristian explained this by using the pictures displayed on the PowerPoint presentation. Chairman Whitaker asked the elevation of the finished floor on the garage. Mr. McChristian stated it would be 16 inches and would be about level with the boat tires shown in the displayed pictures.

Helen Spann asked if the home was built by the Elkins. Mr. Elkins said it was not and that purchased the home in 1996 but it was built in 1994. Ms. Spann asked if Mr. Elkins had asked the developer permission to build this garage. Mr. Elkins explained they were never aware of the subdivision regulation that required permission from the developer. Ms. Spann asked the year listed on the subdivision plat. Ms. Dowdy stated it was from 1991. Ms. Spann stated that she believes the regulations would still be in effect.

Ms. Dowdy explained that the subdivision regulations are more restrictive and supersede the zoning ordinance and that Mr. Elkins would have to check with the developer before erecting the garage. Chairman Whitaker stated that the other detached garages in the subdivision were probably just placed on their property without asking permission. Mr. McChristian asked what the procedure would be if the developer, Mr. Dale Campbell, gives them permission to build this garage in their side yard. Ms. Dowdy stated she presumes the BZA will make a decision tonight. Mr. George Stockton asked if the top level of the proposed garage will be used for rental purposes or for housing someone else. Mr. McChristian stated it would be for storage/attic purposes. Mr. Stockton asked if the garage door will be large enough to fit the boat inside. Mr. McChristian stated it would be large enough and will be adjusted accordingly. Mr. Stockton asked if the garage will look normal, or will it be so large it will appear to be a storage facility or recreational building. Mr. McChristian stated with the windows and the garage matching the look of the house, it will not appear abnormal in any way. Chairman Whitaker stated the garage will be large and it will be in front of the main part of the house. Even though the garage on the other side of the house keeps this proposed garage from being in the front yard, it will give off that appearance that it is because a big portion of it will be in front of the living quarters.

Mr. Seiber stated he appreciates the point Chairman Whitaker made about the garage appearing to be in the front yard, but explained if he were constructing the garage it would be similar to that of the proposed garage in this instance. Mr. Seiber stated he does not think it will detract from the neighborhood and will enhance the neighborhood by removing the boat from the driveway and into a garage.

Mr. Seiber made a motion to grant the variance request to place a detached garage in a side yard at 1307 Fleetwood Drive because it will not detract from the neighborhood and

this location makes the most sense because of the flooding issues on the property and contingent upon the approval of the subdivision developer and a letter from the developer granting the Elkins' request to place a detached garage in their side yard, and based on the findings it does 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 5-2 vote. George Stockton and Bill Whitaker voted no.

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 5:20 p.m.

Chairman, Bill Whitaker

Recording Secretary, L. Peyton Mastera