

**MURRAY BOARD OF ZONING ADJUSTMENTS  
REGULAR MEETING  
WEDNESDAY, DECEMBER 20, 2006  
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, December 20, 2006 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5<sup>th</sup> Street.

**Board Members Present:** Michael Jordan, Scott Seiber, Helen Spann, Bill Whitaker

**Board Members Absent:** Andy Dunn, Ed Davis, and Darren Jones

**Also Present:** Peyton Mastera, David Roberts, Warren Hopkins, Matt Mattingly, Mickie Bartee, Chong Kim, Mary Ann Russell, Rick Fritschle, Cheryl Crick, Mayor Rushing, Kristen Taylor, and Public Audience

Chairman Bill Whitaker called the meeting to order at 4:30 p.m., and welcomed all guests and applicants.

**Approval of minutes from the November 15, 2006 regular meeting: Scott Seiber made a motion to approve the minutes with the noted corrections. Michael Jordan seconded the motion and it carried with a 4-0 voice vote.**

**Review of conditional use permit – Orscheln Farm and Home Store – Eric Mitchuson:** Mr. Peyton Mastera began by showing a PowerPoint presentation that displayed pictures taken by Planning Staff dating back to May and reviewing the original terms of the conditional use permit granted to Orscheln in February of 1998. Mr. Mastera explained that Ms. Candace Dowdy has been working with the manager of Orscheln, Eric Mitchuson, in trying to come more in compliance with the conditional use permit. The original conditional use permit was to allow the following: 36' x 100' area in the parking lot for temporary storage on a seasonal basis; expand the previous chain length fence to 69' and construct it of wrought iron material; create a 20'6" fire lane to the south of the fence; have fabric screening on top of the wall in the front and the outdoor storage be kept in a neat and organized manner; and, the shipping area be kept open. Looking at pictures taken in May, merchandise was being stored in areas not specified in the conditional use permit; most noteworthy, items were being stored along the front sidewalk, the row of parking spaces to the south of the building, in the 20'6" fire lane, the fire lane in front of the store, and to the back of the business where the shipping area is located. Mr. Mastera explained that on October 9, 2006, Ms. Dowdy met with Mr. Mitchuson and reviewed the conditions of the permit. Mr. Mastera showed pictures from November 13, 2006 that displayed some improvements to the outdoor storage of merchandise, but Orscheln still had merchandise in the front fire lane, front sidewalk, some of the parking spaces to the south of the business, and against the back side of the fence next to the shipping area. Mr. David Roberts explained a picture on the PowerPoint presentation that displayed a sprinkler valve next to the shipping area that needs to remain clear. Mr. Mastera stated that the pictures taken on December 20, 2006 were similar in nature to those taken in November and not much had changed. Mr. Mastera

explained that from the pictures taken on December 20, cars are now being parked to the south end of the building. Previously they would not have been able to park in these spaces because of merchandise covering them.

Mr. Seiber asked if this was the only sprinkler hook-up area for the fire department. Mr. Roberts stated that he is not sure. Mr. Roberts explained that the city has been working with Orscheln for the past few years in addressing these issues. Mr. Roberts explained that parking has been an issue and Orscheln had to receive a 22 parking space variance in 2001, which still puts Orscheln 88 parking spaces short of the required parking; per the motion of the parking variance granted, if additional parking was needed, it would be developed. Mr. Roberts stated that it is his understanding that The Murray Bank will be restriping the parking lot.

Mr. Mastera explained that the outdoor storage of merchandise in the front parking spaces was to only be used on a seasonal basis. At the February 1998 BZA meeting, the representative for Orscheln, Mr. Hult explained that the merchandise would only be stored on the specified parking spaces from approximately February until July; Mr. Mastera explained that the storing of merchandise has become year round. Mr. Roberts noted that the present manager, Mr. Mitchuson, has improved the outdoor storage of merchandise since Planning Staff has been working with Orscheln over the past few months, as evident by the pictures.

Chairman Whitaker stated that one of his primary concerns is that since Planning Staff has been working with Orscheln in May, the fire lanes were not clear until October. Mr. Roberts stated that the fire department has worked with Orscheln in the past in addressing the issue. Mr. Seiber asked if the fire department inspects buildings on a consistent basis to make sure specified areas are kept clear. Mr. Mastera explained that the fire department continuously updates their information with building inspections across town. Ms. Spann asked if the merchandise stored along the front sidewalk is always left outside or brought in each day. Mr. Roberts stated that has been an issue because Orscheln does not have a permit to place materials along the sidewalk. Mr. Roberts noted that according to the Fire Marshal, there are to be no flammable materials within ten feet of an entrance. Mr. Roberts explained that to the rear of the business (east side) there is some white rock and dense grade gravel that has been brought in for additional storage space.

Mr. Jordan asked if Orscheln has received a written warning. Mr. Mastera stated that a letter was sent to Mr. Mitchuson on October 9, 2006 and that Ms. Dowdy has met with Mr. Mitchuson, on-site, to address the outdoor storage of merchandise.

**Mr. Seiber made a motion for Planning Staff to notify Orscheln Farm and Home Store that they have one month to come in compliance with the conditions of the original conditional use permit and the BZA will review the conditional use permit at the regular January meeting. Helen Spann seconded the motion and it carried with a 4-0 vote.**

**Review of conditional use application to allow home occupation at 1502 Sycamore Street – Chong Kim:** Mr. Mastera showed the BZA members a PowerPoint presentation displaying pictures of the applicant's home and described the nature of the application. The applicant, Ms.

Chong Kim, lives at 1502 Sycamore Street and is requesting to have a seamstress shop and answering service for a permanent makeup business at her residence. The seamstress work will be done at her home, but the permanent makeup application is done off-site. Ms. Kim applied for a conditional use permit on July 21, 2004 to allow a permanent makeup business at her home. The business will be temporary because Ms. Kim will be out of the country for approximately half of the year. Planning Staff felt the nature of the application had changed enough to allow Ms. Kim to reapply for the conditional use permit. Ms. Kim is requesting the conditional use permit because she has an adult handicap son and she needs to have a supplemental income. Planning Staff explained to Ms. Kim that if her business generates an increase in traffic, she will have to relocate to a business zone. On December 1, 2006, Ms. Dowdy spoke with the Kentucky State Medical Board and Board of Cosmetology; they explained to her there are no regulations or licensing procedures to operate a permanent makeup business. Ms. Dowdy also spoke with Mike Keel at the Health Department and he referred Ms. Dowdy to the Food Department within the state of Kentucky, in Frankfort, because they regulate tattooing. Ms. Dowdy's point of contact in Frankfort, Ms. Ann Hall Norris, explained there are no regulations for people operating a permanent makeup business. Currently, the state is looking to write legislation that will address permanent makeup, but it would not take effect until, at the earliest, the next legislative session. Ms. Kim also submitted copies of her diplomas and certifications of her training to Planning Staff. Ms. Kim is looking to generate only three or four cars a week and her driveway provides ample parking.

Chairman Whitaker explained that the nature of this application is different, but would like to know what would prevent an applicant from continuously reapplying for similar requests until a conditional use permit is granted. Mr. Warren Hopkins stated that the BZA has a restrictive use of land, but when an applicant comes forward with an application that is different from a previous application, the BZA cannot rightfully deny someone to apply for a conditional use permit. If it is being perceived as a trend by an applicant to continually reapply, then the motive of the application can be viewed as a harassment, then a different determination can be made as to hear a case or not.

Mr. Seiber asked if the difference from the previous application is that Ms. Kim will not be selling products. Mr. Mastera explained that according to the previous minutes, Ms. Kim did not want to sell products, but operate the permanent makeup business from her home. The current application is requesting for Ms. Kim to use her home as an office for her makeup business to make appointments, but operate an alteration business from her home. Chairman Whitaker noted the frequency of cars coming to Ms. Kim's house is the same from her previous application, which is 3 or 4 cars a week.

Chairman Whitaker opened the public hearing and asked for anyone wishing to speak in favor of the application to come forward and be sworn in.

Chairman Whitaker swore in Ms. Mickie Bartee, friend of Ms. Chong Kim. Ms. Bartee explained that the reason Ms. Kim wants to operate this business is because of her handicap son. Ms. Bartee stated that on Sundays, Ms. Kim has over 20-30 international students for dinner and bible study and through the week Ms. Kim's alteration business will only bring in four or five

additional cars and she does not see it as a big problem. Ms. Spann asked if there will be three or four cars at a time or would that be for an entire week. Ms. Bartee explained it would only be three or four cars for an entire week. Mr. Seiber asked if her son would go with Ms. Kim when she applies permanent makeup at someone's house. Mr. Bartee stated that she is not sure, but Ms. Kim's son can stay by himself for short periods of time.

Chairman Whitaker asked if anyone else would like to speak in favor of the application. No other person wished to speak in favor of the application. Chairman Whitaker asked if anyone would like to speak in opposition to the application.

Chairman Whitaker swore in Ms. Mary Ann Russell. Ms. Russell lives at 1503 Sycamore Street and is an adjacent property owner to Ms. Kim. Ms. Russell presented a document to the BZA members and read the following, "We believe that the moment a business sign is displayed, the integrity of a residential area is adversely affected and the property values immediately reduced. The homes in our neighborhood reflect a major investment for the owners, and we feel that investment should not be compromised. A second concern is based on the fact that a hazardous traffic condition exists in the Sycamore-15<sup>th</sup> Street area with a heavy flow of traffic to and from Murray High School and to and from downtown Murray. The creation of a business at that point would surely worsen the situation. For these reasons we urge the Murray Board of Zoning Adjustments to deny the request of Chong Kim for a conditional use permit to operate a business for permanent make-up in her home located at 1502 Sycamore Street." *Mr. Mastera submitted the attachment as "Exhibit A."* Mr. Seiber asked if there was no sign on the premises would she be opposed to the alteration business being at Ms. Kim's home. Ms. Russell said it would change her mind and felt it might be a good compromise to not permit a sign on the premises. Ms. Russell stated that she fears more signs would come about in the area if this residence had a business sign. Mr. Seiber stated these permits are handled on a case-by-case basis and they are evaluated on how the business will alter the neighborhood; in no way does it mean other houses in the neighborhood will start having signs in their yards.

Ms. Spann asked Ms. Bartee if there will be a sign on the premises. Ms. Bartee explained there will only be an advertisement in the newspaper, but no sign.

Chairman Whitaker closed the public hearing.

Chairman Whitaker explained that although the application is different, the same amount of traffic is going to be generated and the conditions of the neighborhood would be equally affected. Chairman Whitaker asked why the permit was denied then, but why it should be allowed now. Ms. Spann stated that she felt the Board was under the impression more traffic would be generated. Mr. Seiber noted that although the minutes do not reflect it, Mr. Seiber stated the reason he voted against the previous request was because Ms. Kim wanted to sell products from her home. Ms. Spann explained that if the normal flow of traffic increases then the business will need to be moved to an applicable zone.

Chairman Whitaker swore in Ms. Chong Kim. Mr. Jordan asked what kind of seamstress work Ms. Kim will be doing. Ms. Kim stated that it will be to repair clothing for individuals. Ms.

Kim stated she will move her business if it generates too much traffic. Ms. Kim added there are plenty of parking spaces and enough room for cars to turn around in her driveway. Chairman Whitaker asked if any permanent makeup will take place at 1502 Sycamore Street. Ms. Kim stated she will travel to do her work. Chairman Whitaker asked how many customers it would take for Ms. Kim to decide it would be enough to move to another location. Ms. Kim stated that it would have to be four or five customers a day.

**Helen Spann made a motion to approve the conditional use permit to allow a seamstress shop and answering service for an off-site permanent makeup business at 1502 Sycamore Street under the following conditions: there be no sign other than that appropriate at a residence; Ms. Kim must comply with any permanent makeup regulations set forth by the city or state; conditional use permit is subject to review in six (6) months or if Planning Staff receives complaints prior to six (6) months. Scott Seiber seconded the motion.** Chairman Whitaker asked for clarification of the portion of the motion that dealt with signage. Ms. Spann explained that she would like to see a sign that identifies her house, but no sign that advertises the business. **Helen Spann amended her motion to approve the conditional use permit to allow a seamstress shop and answering service for an off-site permanent makeup business at 1502 Sycamore Street under the following conditions: there is to be no sign advertising the business; Ms. Kim must comply with any permanent makeup regulations set forth by the city or state; conditional use permit is subject to review in six (6) months or if Planning Staff receives complaints prior to six (6) months.** Mr. Seiber requested that, “customers must exit onto 15<sup>th</sup> Street”, as a part of the motion. **Helen Spann included into her previous motion the condition that customers must exit onto 15<sup>th</sup> Street. Michael Jordan seconded the amended motion and it carried with a 4-0 vote.**

**Review of conditional use permit – 609 S. 4<sup>th</sup> Street – Gray’s Flea Market:** Mr. Mastera explained to the BZA members there was a time conflict and that this item on the agenda would be tabled to the January BZA meeting.

**Dimensional variance request to allow accessory structure in side yard and for one additional freestanding sign – 2185 HWY 641 North – Max Arnold and Sons:** Mr. Roberts explained to the BZA members that Max Arnold and Sons applied for this same variance at the May 17, 2006 BZA meeting. The variance is to place an underground weigh scale for trucks and accompanying directional sign to the south side of the BP gas station. The previous request was denied; the BZA cited safety concerns because drivers would have to pull out onto HWY 641 North at the south entrance and then reenter at the north entrance after weighing their semi-trucks. Since the previous meeting, the state has installed a turning lane at both entrances to help alleviate traffic; thus, Max Arnold and Sons reapplied for the variance. Mr. Roberts showed the BZA members a PowerPoint presentation of the newly installed turning lanes and pictures of what the weigh scale and accompanying sign would look like. The proposed sign is 72 square feet (6’ x 12’) and located next to the weigh scale on the south property line.

*The following are some pictures from the PowerPoint presentation -*



Mr. Seiber stated that from the previous meeting it was explained that this is the only location the weigh scale can be located. Mr. Roberts stated that it is his understanding. Mr. Roberts noted the application itself is the same as the previous application, but the mitigating factor with this application is the installation of the two turning lanes on HWY 641 North.

Chairman Whitaker swore in Mr. Rick Fritschle, representative of Max Arnold and Sons. Mr. Fritschle explained the reason Max Arnold and Sons decided to reapply is because with the addition of the turning lanes safety is improved. Mr. Seiber explained that his concern from May's BZA meeting and the same concern of tonight's meeting is that semi-trucks are still going to have to cross a lane of traffic (HWY 641 North, southbound) two times; Mr. Seiber went on to explain that portion of HWY 641 is not well lit and cars often drive fast through this location. Mr. Fritschle explained that a lot of drivers like to weigh before they fuel up their truck so they can identify how much fuel they can take on. However, for a driver to weigh then circle out and return to fuel their truck entails an added expense; Mr. Fritschle explained the majority of drivers will simply estimate their fuel intake and not weigh. Mr. Seiber asked what percentage of truckers will make the circuitous route which includes both weighing and fueling of a truck. Mr.

Fritschle estimated less than 30% of trucks would weigh first then come back to refuel. Mr. Jordan asked why the scale was cannot be located elsewhere on the property. Mr. Fritschle stated the south side works best for drivers to line up straight and exit straight off the scale. Mr. Fritschle also added that they are limited with parking and they do not want to eliminate the parking to the north of the gas station. Mr. Fritschle stated the adjacent property owner, Mr. Jerry Rayburn, will most likely not lease any more property to Max Arnold and Sons.

Mr. Jordan asked if the normal flow of traffic is to enter from the north entrance and then exit from the south entrance. Mr. Fritschle stated that drivers know from experience how the gas station is devised and that how the fuel stations are situated, it is best to enter from the north and exit to the south. Mr. Jordan stated that it appears to him the weigh station could be situated to the north side of the property. Mr. Fritschle explained there would be no room for the trucks to adequately turn around to the fuel stations.

Mr. Seiber stated that in good conscious he cannot vote to have 30% of trucks exit and reenter the gas station. Mr. Fritschle asked if the scale was relocated so that the drivers have access to the scales prior to fueling would it be approved. Mr. Seiber stated that if Mr. Fritschle can show that 30% of trucks will not be circling onto HWY 641 he will have his vote. Ms. Spann stated she would like to see the scale at this location but the property is difficult to find a location for the scale.

**Scott Seiber made a motion to deny the dimensional variance request to place an accessory structure in a side yard and for an additional freestanding sign because there a certain percentage of trucks will have to exit and reenter the facility thereby creating a traffic hazard that would not normally be there and due to the adverse affect on public health, safety, or welfare, specifically the safety hazards of a projected traffic increase at the property's entrance and exit areas with HWY 641 North. Michael Jordan seconded the motion and it carried with a 4-0 vote.**

**Request to place additional window signage – 200C N. 12<sup>th</sup> Street – Heil Beauty Supply – Cheryl Crick:** Mr. Mastera showed the BZA members a PowerPoint presentation of the current window signage at Heil Beauty Supply. There are four storefront windows at Heil Beauty Supply. All four windows have a sticker material completely covering the windows; they were placed on these windows in November 2006. The zoning ordinance allows window signage, but only at a 25% rate. The applicant is requesting to remove the stickers from two outer windows and leave the two inner windows as they are.



Mr. Mastera explained that 5 years earlier the store was restructured so that the cash register and shelving was situated in between both entrances. The owners of the store decided to “black out” (paint) the two inner windows so that nobody could look in the store. The stickers would cover up the two painted windows.

Chairman Whitaker swore in Ms. Cheryl Crick, manager of Heil Beauty Supply. Mr. Jordan asked if the business is wholesale or retail, in nature. Ms. Crick stated they are a wholesale business. Mr. Jordan stated he does not see a need for this kind of advertising since there is an established client base. Ms. Crick stated it is more for curb-side appeal. Ms. Spann asked if there are any other wholesale businesses similar to Heil Beauty Supply. Ms. Crick stated that behind Sirloin Stockade there is another wholesaler called State Beauty Supply. Chairman Whitaker asked what would make this circumstance unique to some other business in town. Ms. Crick explained that when the store was restructured, the window is painted black and it would be more appealing. Chairman Whitaker asked how often these stickers would be changed. Ms. Crick stated that is a corporate office decision but assumes they would change when the stickers become faded.

**Scott Seiber made a motion to approve a 25% window signage variance for Heil Beauty Supply, located at 200C N. 12<sup>th</sup> Street based on the fact 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. Helen Spann seconded the motion and it carried with a 3-1 vote. Bill Whitaker voted no.**

Being of no further business, **Scott Seiber made a motion to adjourn. Helen Spann seconded the motion and it carried with a 4-0 voice vote.**

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Chairman, Bill Whitaker

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Recording Secretary, L. Peyton Mastera