

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, JANUARY 17, 2007
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, January 17, 2007 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5th Street.

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

Board Members Absent: None

Also Present: Candace Dowdy, Peyton Mastera, David Roberts, Mike Pitman, Matt Mattingly, John Gray, Eric Mitchuson, Amanda Freiling, James D. Tolley, Danyel Tolley, Morgan Williams, Robert Clendenen, Tri Dinh, Mancel Vinson, 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 December 20, 2006 regular meeting: Scott Seiber made a motion to approve the minutes as presented. Michael Jordan seconded the motion and it carried with a 7-0 voice vote.

Review of conditional use permit – 609 S. 4th Street – Gray’s Flea Market: Mr. Mastera began by showing a PowerPoint presentation that displayed pictures taken by Planning Staff dating back to the summer of 2006 and reviewing the conditional use permit granted to Gray’s Flea Market at the September 20, 2006 meeting. Mr. Mastera also showed pictures of storage containers that Mr. Gray would like to use in the rear of his business. The following conditions were placed on the permit:

- Removal of the two trailers to the rear of the business
- Removal of the trailer used for transporting merchandise be parked at another location
- Removal of the white car on the south side of the property
- No storage of merchandise from the front building line forward
- All trailers with advertisement shall be placed in the rear yard area
- There must be a major cleanup and reorganization of the merchandise so that it is aesthetically pleasing
- All merchandise must be off the street right-of-way
- Planning Staff shall inspect the property in 60 days to ensure the aforementioned stipulations are being met and then report back to the BZA

Mr. Mastera explained to the Board members that two issues are at hand tonight. The first, has Mr. Gray come into compliance with the conditions set forth at the September 20, 2006 BZA meeting. Secondly, Mr. Gray asked Planning Staff if it would be alright to use storage

containers in place of the tractor trailers in the rear yard of Gray's Flea Market. Planning Staff told Mr. Gray it would up to the Board to decide if these containers could be used. Ms. Dowdy noted to the Board a previous ruling made in which tractor trailers were ruled not to be accessory structures, but the zoning ordinance does not take into account storage containers such as these. Other businesses across town have these containers, but are often times out of visibility (eg. Wal-Mart). Mr. Pitman explained the two issues at hand are to first decide if Mr. Gray has complied with conditional use permit, then decide if these storage containers would be permissible.

Mr. Seiber asked about the signage at this location. Ms. Dowdy stated that Mr. Gray leases this property and that the property owner has been contacted about removing the sign that extends above the roof and removing the free-standing wooden frame to the southwest corner of the property. Ms. Dowdy explained that Mr. Gray would be allowed window signage or a wall sign.

Chairman Whitaker swore in Mr. John Gray, owner of Gray's Flea market. Mr. Gray stated that the storage containers would be used for items that cannot go outside and need to remain dry. Mr. Gray explained that the black trailer in the front of the business (that is supposed to be to the rear of the business) was only there from Sunday until Wednesday while transporting merchandise to the store. The trailer has been taken back to the rear of the business. Mr. Seiber asked if these containers would be accessible to the public to use. Mr. Gray stated that customers would be able to shop from these containers in the same way customers used the tractor trailers to shop out of. Mr. Gray noted that the containers will be locked at night time. Mr. Jordan stated that there seems to be an issue of liability because these containers are not designed to sell merchandise out of.

Mr. Seiber asked Mr. Gray how he felt about putting up a fence. Mr. Gray explained that a big portion of his business is generated from drive by traffic being able to see his merchandise. Mr. Seiber asked how many of these storage containers he would need. Mr. Gray stated he would only use two storage containers and they would be located in the same place the tractor trailers were located.

Mr. Davis asked for the opinion of the staff and if they felt Mr. Gray was complying with the conditional use permit. Ms. Dowdy explained that the question of aesthetically pleasing is "in the eye of the beholder" but that Mr. Gray seems to have fully complied with the other conditions on the conditional use permit. Mr. Gray stated that if anything is ever displeasing to the city, staff can contact him and he will come in compliance.

Mr. Dunn asked if electricity would be run to these trailers. Mr. Gray stated that there will be no electricity run to the trailers and that they will only be open during daylight hours. Ms. Spann reiterated the notion of possibly erecting a fence and the idea of placing a sign which advertises the flea market rather than advertising by displaying merchandise to drive by traffic.

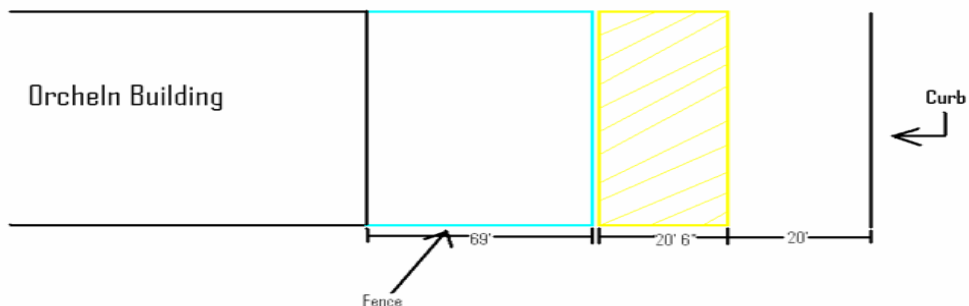
Ed Davis made a motion that Mr. Gray has met the conditions set forth in the conditional use permit granted to Gray's Flea Market at the September 20, 2006 Board of Zoning Adjustments meeting, but still has reservations about the condition of it being aesthetically

pleasing. Scott Seiber seconded the motion and it carried with a 4-3 vote. Andy Dunn, Helen Spann, and Bill Whitaker voted no.

Ed Davis made a motion to table the request of placing storage containers in the rear yard of Gray's Flea Market until more information is available and Planning Staff can investigate these trailers with interior photographs of these containers. Helen Spann seconded the motion and it carried with a 7-0 vote.

Review of conditional use permit – Orscheln Farm and Home Store – 700A N. 12th Street – Eric Mitchuson: *Mr. Darren Jones recused himself from this item on the agenda due to a conflict of interest.* Mr. Mastera explained that this item was reviewed at the December 20, 2006 meeting. (See BZA minutes 12-20-06). The manager of Orscheln, Eric Mitchuson, was not in attendance at the December meeting. The Board asked for Planning Staff to contact Orscheln and give them one month to come in compliance with the original conditions of the conditional use permit and the application would be reviewed at the January 17, 2007 regular meeting. Mr. Mastera stated that through discussions with Orscheln, they are interested in amending their original conditional use permit so that merchandise can be stored on a year-round basis and so that merchandise can be placed along the front sidewalk. Mr. Mastera presented a PowerPoint presentation displaying all previous pictures and some updated photos since the last BZA meeting. The pictures show that all items placed on the parking lot to the south of the business have been removed, but items still remain on the front sidewalk (however, all combustible or flammable items have been moved more than 10' from the front entrance). Ms. Dowdy explained that Planning Staff has been working with Orscheln for multiple years in trying to stay in compliance with the conditional use permit. Ms. Dowdy noted that to the rear of the business, the property owners agreed to reserve a strip of the rear property (covered in white rock) where Orscheln could store additional merchandise. Ms. Dowdy stated that Mr. Mitchuson expressed an interest in placing shelving within this area to hold more merchandise. Ms. Dowdy then reviewed the terms of the original conditional use permit:

- 36' x 100' area in front parking lot for temporary storage (app. 20 spaces)
- Expand fencing to 69'
- 20'6" fire lane
- Fabric screening being placed on top of the wall in the front and the outdoor storage be kept in a neat and organized manner; shipping area be kept open



Ms. Dowdy noted that in 1998, according to Mr. David Hult, regional manager, most Orscheln businesses utilize 12,000 sq. ft. of outdoor storage; at this store, they only requested 3,600 sq. ft.

Chairman Whitaker swore in Mr. Eric Mitchuson. Mr. Mitchuson explained to the Board members that the horse stall has been removed from the end of the sidewalk and all panels around the front entrance are no longer there. Mr. Mitchuson stated that Orscheln would like to amend their original conditional use permit so that items could be left outside on a permanent (year-round) basis. Mr. Mitchuson stated that the corporate office requires them to place certain items along the front sidewalk; Mr. Mitchuson is requesting to use approximately a four (4) foot wide space to place merchandise along the front sidewalk, but not include the sidewalk area in front of the glass portion of the store. Mr. Mitchuson explained this would leave 4'11" wide space for people to use the sidewalk. Mr. Seiber asked the depth of the fenced in area. Mr. Mastera stated that it is approximately 167 feet in depth and 69 feet wide (11,523 sq.ft.). In total, Orscheln has approximately 15,123 sq. ft. (11,523 + 3,600) of designated space to store merchandise outside the building.

Chairman Whitaker asked why the merchandise is still in areas not specified within the conditional use permit when Planning Staff has been in contact with Orscheln since November. Mr. Mitchuson stated that all information given to him by Planning Staff is relayed to his corporate office and they tell him how to store the merchandise outside. Mr. Seiber stated that the Planning Staff should not be responsible for having to inspect the premises on a consistent basis when it is in writing what they are supposed to be doing.

Chairman Whitaker swore in Ms. Amanda Freiling, district manager of Orscheln and reports to Mr. David Hult. Ms. Freiling noted that the nature of Orscheln's business has changed since 1998 and the store would look to come to a compromise with the City of Murray in so that they can be in compliance. Ms. Freiling stated that the lines of merchandise have expanded over the past three years to include more outdoor storage of merchandise.

Ms. Spann asked if the fabric screening specified in the original permit had been put up. Mr. Mitchuson stated it has not been up since he has been in Murray, but there is a fabric material in storage that he presumes is the previous fabric screening. Ms. Freiling stated that a new fabric screening can be put up.

Helen Spann made a motion to amend the conditional use permit for Orscheln Farm and Home Store, located at 700A N. 12th Street, recorded in Deed Book 227, Page 308 to include that the fabric screening must be replaced; all outdoor storage of merchandise be allowed on a year-round basis; outdoor storage of merchandise is permitted along the front sidewalk at a four (4) foot width with the exception of the sidewalk area in front of the glass storefront – at this portion, no sidewalk storage of merchandise is allowed. Andy Dunn seconded the motion and it carried with a 4-2 vote. Michael Jordan and Bill Whitaker voted no.

Chairman Whitaker called for a break while Planning Staff changed the video tape. Mr. Darren Jones rejoined the BZA.

Public Hearing to review conditional use application to allow two non-related persons to occupy the premises in an R-2 zoning district – 1105 Poplar Street – James D. Tolley: Ms. Dowdy stated that the Planning Staff sent a letter to the property owner at 1105 Poplar Street to inquire if the residence was being used for multi-family use. The property owner, Mr. James Tolley explained to Planning Staff he purchased this property so that his daughter could occupy the premises while attending school at Murray State University. Mr. Tolley is requesting two individuals be able to reside on the premises at 1105 Poplar Street; this would only be allowed as a conditional use in an R-2 zone. All adjacent property owners were notified of the public hearing. No other conditional use permits within the area have been applied for. Ms. Dowdy stated that the police have never received any complaints concerning this property. Ms. Dowdy showed a PowerPoint presentation displaying the house with a single lane driveway; also, Ms. Dowdy showed an aerial photograph displaying the surrounding zoning. Ms. Dowdy stated that she has a letter that will be submitted into evidence from an adjoining property that will be read during the public hearing. Ms. Dowdy stated that it was explained by Mr. Tolley the he has received permission from the neighbor across the street so that his tenants can use the driveway if needed. Mr. Mastera stated he received a phone call from an adjacent property owner inquiring about the letter they received notifying them of the public hearing, but they did not lend support or oppose the application.

Chairman Whitaker opened the public hearing and asked for anyone wishing to speak in favor of the application to please come forward. Chairman Whitaker swore in Mr. Chip Adams, attorney representing Mr. James Tolley. Chairman Whitaker swore in Mr. James Tolley, applicant. Mr. Adams stated that Mr. Tolley is a resident of the Murray community. His daughter, Danyel Tolley, is a student at Murray State University and baby-sits for a family that requests her services starting early in the morning to late at night, oftentimes. Mr. Adams noted that it has been brought to the attention of Mr. Tolley that some neighbors have had complaints in regards to car lights shining in the windows of neighbor's homes. Danyel and her roommate have begun turning their head lights off when entering and exiting the premises. Mr. Adams stated that Mr. Tolley would like to have the conditional use granted so that the parents can have a sense of safety with a roommate. Mr. Adams presented a document to the Chairman. *Mr. Mastera submitted into evidence, Exhibit 2.* Chairman Whitaker asked for the time frame for Danyel. Mr. Tolley explained that Danyel should graduate by May 2010. At that time Danyel will have the option to purchase the home; if she does not want to purchase the home, Mr. Tolley stated he would sell the home to someone else. Mr. Seiber asked what his "house rules" are for his daughter, Danyel and her roommate. Mr. Tolley stated that there should be no smoking in the house or any unlawful activity. Mr. Tolley explained that when his daughter moved in over the Christmas break, they had a lot of people over to celebrate the new home. Mr. Tolley stated that he knows Poplar Street can be dangerous and pulling out of the driveway can be troublesome; the light pole has been hit on several occasions.

Chairman Whitaker asked for anyone wishing to speak in opposition to the application to please come forward. Chairman Whitaker swore in Mr. Robert Clendenen, resident of 1103 Poplar Street. Mr. Clendenen expressed his concerns with house being so close to that of 1105 Poplar Street. Mr. Clendenen's bedroom is approximately four (4) feet from the driveway and he does not want cars "coming and going all through the night" and parking in his yard. Mr. Clendenen

stated that the girls do smoke outside, but cigarette butts end up in his yard. Mr. Clendenen stated that there have been times when cars have been parked on his yard.

Chairman Whitaker asked if anyone if anyone else wished to speak in opposition. Ms. Dowdy read a letter from Ms. Shirley Cothran, resident at 1104 Poplar Street, in opposition to the application.

Mr. Adams stated that if Danyel's current roommate, Ms. Morgan Williams, is not permitted to live in this house with Danyel, the same problems Mr. Clendenen expressed will still be evident. Mr. Adams explained to the Board that this application is about Danyel and Morgan learning how to be a neighbor in a residential neighborhood. Mr. Seiber asked if Mr. Tolley was aware of the zoning restrictions. Mr. Tolley explained that he was not aware of the ordinance.

Chairman Whitaker swore in Ms. Danyel Tolley and Ms. Morgan Williams. Chairman Whitaker asked the girls what their plan was to mitigate the parking situation. Both girls explained to the Board they have already implemented rules for guests and acknowledged the danger of backing onto Poplar Street. Ms. Tolley stated that they limit the amount of guests that come over or they require guests to park their cars elsewhere when visiting.

Mr. Clendenen explained that the girls have had multiple cars in the driveway and coming in and out at all hours of the night on more than once occasion, and not just the Christmas party the applicant is referring to. Mr. Clendenen stated that since the letter was received notifying himself of the public hearing, there have been no disruptions to speak of. Mr. Clendenen explained that he is not opposed to his neighbors having company, but does not like having cars parked on his property and cars coming and going late into the night.

Chairman Whitaker asked Mr. Pitman what would be some fair conditions to place on the conditional use permit. Mr. Pitman stated that the Board cannot really limit the amount of people that can come over, but could limit the amount of cars that are parked in the driveway and limit the time for outdoor activity.

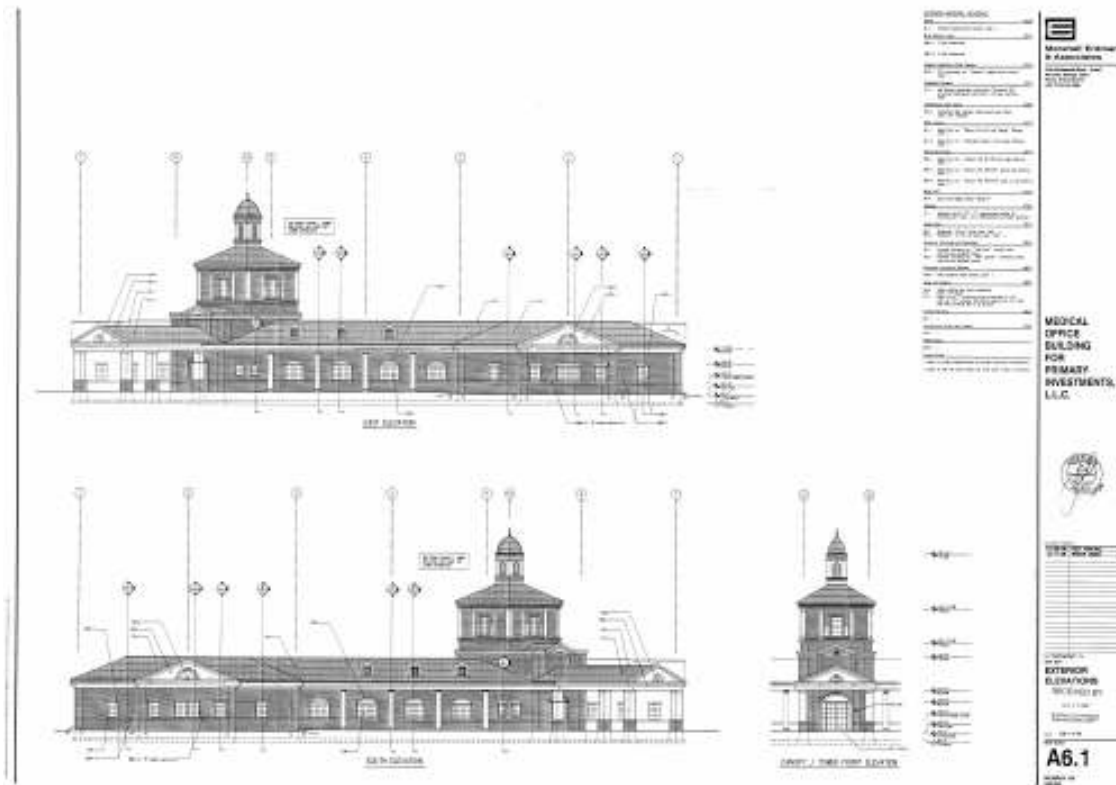
Andy Dunn made a motion to approve the conditional permit application for Mr. James Tolley, at 1105 Poplar Street, to allow two non-related persons to occupy the premises in an R-2 zone with the following conditions: no outdoor activity passed 10:00 p.m.; no more than five (5) cars in the driveway at any given time; cars must stay off the sidewalks and adjoining property; the permit is limited to the duration of Danyel Tolley being a student at Murray State and one (1) other non-related person to occupy the premises; no complaints or reports; and, conditional use permit is to be reviewed in six (6) months and if necessary every twelve (12) months hereafter. Helen Spann seconded the motion and it carried with a 5-2 vote. Ed Davis and Scott Seiber voted no.

Andy Dunn recused himself from the last two items on the agenda due to a conflict of interest.

Variance request for additional height on building – Primary Care Medical Facility – 1000 S. 12th Street: Ms. Dowdy stated that the proposed Primary Care Medical Facility will have a

60'2" tall tower with accompanying spire. Under the City of Murray's Zoning ordinance, the height of a building in a B-2 zone cannot exceed 35'. The applicants are requesting a 25'2" height variance be granted. The overall height will be 60'2".

Chairman Whitaker swore in Ms. Ellen Whitaker, representative for Marshall-Erdman and Associates, the design firm for the Primary Care Facility. Ms. Whitaker explained to the Board this building, from aesthetic standpoint would include applicable context, character, and identity. Ms. Whitaker stated that the spire will bring natural light into the facility.



Ed Davis made a motion to approve the 25'2" height variance for the proposed Primary Care Facility located at 1000 S. 12th Street as it is in conformity to other structures across town and in 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. Darren Jones seconded the motion and it carried with a 6-0 vote.

Variance Request for temporary placement of an accessory structure in a side yard – 1808A Monroe Avenue – Tri Dinh: Ms. Dowdy explained that a building permit was issued to Tri Dinh on April 4, 2006 for an attached carport to be added to each side of the duplex. The carports were never constructed. It was brought to the attention by an adjoining property owner that a metal carport was placed in the side yard at 1808A Monroe Avenue. The zoning ordinance states that accessory structures are only permitted in rear yards and must be located at least five (5) from side and rear property lines. Tri Dinh is requesting a dimensional variance be granted in

order to keep the carport as its present location for a temporary time until it can be moved to the rear yard. This property is located in Meadow Wood subdivision.



Ms. Dowdy explained that all homes within Meadow Wood, with the exception of the homes along Monroe Avenue, are single-family homes; Monroe Avenue is used for multi-family purposes. The covenants and restrictions do not prohibit accessory structures but all setbacks for structures must be at least 15' off the side property line. Ms. Dinh is requesting this carport be allowed to remain at its current location until the weather is better and it will then be placed in the rear yard. Ms. Dowdy read a letter from the resident of 307 Oakdale Drive, Mr. Marc Peebles, in opposition to the carport being placed at its current location (*Mr. Mastera submitted the letter as Exhibit 1*). Ms. Dowdy explained that the way the subdivision regulations state, the 15' side setback is for the principal structure and not for accessory structures. Mr. Pitman stated that an option the BZA has could be to deny the application and give the applicant a specified amount of days to move the carport in so that the Board can avoid granting a temporary variance.

Chairman Whitaker swore in Ms. Tri Dinh. Ms. Dinh explained she would only like to have the carport in a side yard until the weather is better. Ms. Dinh explained she will be moving the current carport to the rear yard.

Chairman Whitaker swore in Mr. Mancel Vinson. Mr. Vinson described the origins of the subdivision and the intentions of the developer when it was created.

Helen Spann made a motion to deny the request by Tri Dinh to place an accessory structure in a side yard at 1808A Monroe Avenue and that the applicant has 90 days to remove the carport. Scott Seiber seconded the motion and it carried with a 6-0 vote.

Questions and Comments: Mr. Davis briefed the Board members of the previous night's Planning Commission meeting in pertinence to the traffic study conducted for the Campus Suites' PDP application. The traffic study showed that a turning lane, at this time, is not needed for the proposed development along N. 16th Street. (*See Planning Commission minutes 1-16-07*).

Being of no further business, **Scott Seiber made a motion to adjourn. Darren Jones seconded the motion and it carried with a 6-0 voice vote.** The meeting adjourned at 8:15 p.m.