

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, JULY 18, 2007
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, July 18, 2007 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5th Street.

Board Members Present: Ed Davis, Andy Dunn, Helen Spann and Bill Whitaker

Board Members Absent: Darren Jones, Scott Seiber

Also Present: Candace Dowdy, Peyton Mastera, Mike Pitman, David Roberts, Kristen Taylor, Reta Gray, Paul and Vickie Garland, Richard Lindamood, Michael Watson, 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 June 20, 2007 Regular Meeting: Andy Dunn made a motion to approve the minutes with the noted corrections. Ed Davis seconded the motion and it carried with a 4-0 voice vote.

Review of Conditional Use Permit – 1105 Poplar Street: Chairman Whitaker stated that the applicants were unable to attend the meeting and noted to the audience this item would be tabled when it comes about during the meeting.

Compatibility hearing for Planned Development Project (Storage Units) at 1900 North 12th Street – Murray Business Center - Paul Garland: Ms. Dowdy pointed out the proposed area on a Power Point presentation. The property in which this proposed development is going (to the east of the Murray Business Center) was rezoned last year as B-2, Highway Business. The preliminary site plan shows three storage units. Access to the buildings will be through the entrance of the Murray Business Center off of the HWY 641 frontage road. There is a 25-foot strip from the back of the storage units (eastern side of the proposed development) to the property lines of the adjoining Catlin and Thorn properties. All setback requirements will be met. According to the site plan, buildings 1 and 2 will be 30' x 260' and contain 52 storage units each. The units will be 10' x 20' on one side and 10' x 10' on the other side and have 8'8" x 7' doors. Building 3 will be 20' x 260' and contain 26 storage units. The units will be 10' x 20' in size with an 8'8" x 7" doors. There will be a total of 130 storage units.

Chairman Whitaker swore in Mr. Paul Garland, P. O. Box 65 in Murray. Chairman Whitaker asked Mr. Garland to explain the range in elevation of the area that was being used for the proposed project and what he intended to do about the situation. Mr. Garland stated that he intended to fill in the land to level it and that he had no intentions of disturbing anything along the property lines that were adjoining. Chairman Whitaker then asked about lighting around the

units. Mr. Garland stated that he planned on having sconces attached along the sides of each building. There were no more questions for Mr. Garland.

Ms. Dowdy reminded the BZA members that this item will go back to the Planning Commission for a public hearing to review the preliminary site plan and then back to the BZA for a public hearing for a Conditional Use Permit.

Ed Davis made a motion that Mr. Garland's storage units were compatible to the area. Andy Dunn seconded the motion and it carried by a 3-1 vote. Helen Spann voted no.

Request for parking variance - 1401 Main Street – Tropical Smoothie Café – Richard Lindamood: Ms. Dowdy pointed out the proposed area on a Power Point presentation. The business that was previously at this location was a sandwich shop named The Main Thing. Ms. Dowdy explained that the previous property owner had sold the lot and the mobile building that currently occupies the lot. The building will be moved from the property to make way for the new site built structure. The site plan for the proposed building with a patio area was shown. It includes a seating capacity for approximately 60 people. The front setback will be from Main Street with the secondary setback from 14th Street. Since the west side of the building will be only five feet off the property line and it is in a B-1 area, that side of the building will be required to have a fire rated wall. Currently there are pine trees located along the south side of the lot that will provide proper screening since the adjoining property is in a residential zone. All sides meet setback requirements.

Based upon the plans submitted, Tropical Smoothie Café will be required to have 35 parking spaces; the current site plan shows availability for only 32 parking spaces. The applicant is asking the Board to grant a three parking space variance. The applicant is expecting a lot of walk up traffic because of the proximity to the university. The Planning Department does not think that altering the parking by three spaces would present a problem.

The sign for the business is still in question as to whether it will be a monument or pylon sign. Mr. Mike Pitman, attorney for the BZA, reminded the Board that they had the prerogative to place conditions whenever someone was asking for a variance, this includes possibly placing restrictions upon the free-standing sign. Ms. Dowdy stated that since the business has 80 feet of road frontage, they would be able to install up to a 40 square foot sign. She also stated that since the building was on a corner lot, they would be allowed two wall signs.

Chairman Whitaker swore in Mr. Richard Lindamood of P. O. Box 858 in Murray, representative for Tropical Smoothie Café. Mr. Lindamood stated that there would be signage on the building on the Main and 14th Street sides and if the company decided to do a pole (pylon) or monument sign, it would be small and at eye level. Mr. Dunn asked Mr. Lindamood to clarify the size of the sign. Mr. Lindamood said the sign would not be over eight or ten feet tall. In addition, Mr. Lindamood said the plans were to add a small waterfall with pool area on the front of the building that was facing 14th Street providing that drainage would allow it. Ms. Dowdy stated that the sign would have to approved through the Planning Department.

Mr. Dunn asked what the hours of the business would be. Mr. Lindamood stated they anticipated 7:00 a.m. until 10:00 p.m. Mr. David Roberts asked if there was going to be any additional lighting, such as flood lighting that might be intrusive to the residents. Ms. Dowdy stated that she had previously spoken to one property owner and their concern was that the outside lighting would be bothersome such as the floodlights that are in place now. Mr. Lindamood said the decision had been made to use subdued lighting. He also stated that the actual signage for Tropical Smoothie Café's was not brightly colored neon signs, they were very subdued and lightly colored.

Chairman Whitaker asked if there were any questions from the audience. Chairman Whitaker swore in Mr. Wayne Sheeks of 1323 Main Street. Mr. Sheeks stated that he lived just east of the proposed site and he was concerned about the paving and elevation of paving causing water runoff. Mr. Sheeks said that 14th Street has a hump in it, which presently prevents water from running onto his property. His concern was that the paving be kept below the height of the hump. Mr. Lindamood said that Geo Tech has been hired to do the survey for the elevation and drainage. In addition, Geo Tech will be the civil and electrical Engineers. The revised plans are being finalized by VL Associates and will be delivered to Geo Tech. The drawings will then be delivered to the Planning Department for review. Mr. Roberts stated that the rules are that there should be zero net gain of water from predevelopment to post development of the project and also there is a 25-year storm limit and 10-year limit criteria. Chairman Whitaker assured Mr. Sheeks that there are people addressing his concerns.

Andy Dunn made a motion to approve the parking variance request of three parking spaces from 35 to 32 spaces for Tropical Smoothie Café, located at 14th and Main Street because of its close proximity to the University and expected walk up traffic and that it does not adversely affect the public health, safety or welfare nor would it alter the essential character of the general facility and it would not cause a hazard or nuisance to the public. It would not allow any unreasonable circumvention of the requirements of the zoning regulations. It was also noted that the Planning Staff should review any lighting plans to make sure it will not be intrusive to the neighbors. **Ed Davis seconded the motion and it carried with a 4-0 vote.**

Review of Conditional Use Permit – 1105 Poplar Street – James D. Tolley: Ed Davis made a motion to table this item. Andy Dunn seconded the motion and it carried with a 4-0 voice vote.

Public Hearing to review Conditional Use application for non-related person to occupy the premises - 1302 Farris Avenue – Michael J. Watson: Peyton Mastera stated that in early June the Planning Staff received a phone call concerning the home at 1302 Farris Avenue possibly being used as multi-family. A letter was sent to the property owner, Michael J. Watson, asking how the home was being used. Mr. Watson's Attorney, Mr. Alan C. Stout, responded with a letter explaining the current living situation. Michael J. Watson's brother, Tyler, is currently living at the location along with a friend, Austin Berry. Upon hearing Mr. Stout's appeal, Planning Staff required that a Conditional Use Permit be applied for to allow a non-related person to occupy the premises. All adjoining property owners were notified of the public

hearing. Mr. Mastera noted that a conditional use permit was applied for at this same location two years earlier, but the applicant was different. That application was denied.

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

Chairman Whitaker swore in Mr. Michael W. Watson of Marion, KY, father and representative of Michael J. Watson. Mr. Michael W. Watson stated that his son is gone the majority of the time traveling for the company for which he works. Mr. Watson stated that his son, Michael J. Watson, bought the house at 1302 Farris Avenue and his brother, Tyler, was living there along with a friend, Austin Berry. Mr. Watson stated that Mr. Berry lives there and helps with the upkeep of the home and yard in exchange for the rent. Mr. Watson told of the improvements that he and his wife had made to the property since their son had bought it. He stated that he would like to assure the neighbors that his son, Tyler, and his friend were good neighbors. He stated that this living arrangement helps out the boys as well as their families financially.

Chairman Whitaker asked for anyone wishing to speak in opposition to the application.

Those who were sworn in and spoke against the application were: Phillip Moore, 1303 Olive Blvd.; Gene Schanbalcher, 1314 Farris Avenue; Lucy Taylor, 1304 Farris Avenue; Bill Sanders, 1311 Farris Avenue; and Sue McCoart, 1312 Farris Avenue.

Mr. Moore was representing the Olive Boulevard Association, which has 22 families. The Association put together a petition along with the help of the Farris Avenue residents and received 40 names objecting to the Conditional Use Permit. The main reason that people who signed the petition was the fear of establishing a precedence of conditional use permits in a residential zone. Chairman Whitaker asked when the petition was taken around, what kind of requests was made in order to have someone sign it. Mr. Moore stated that the general appreciation that the people had that they were being represented was overwhelming. He also said that he explained the Conditional Use Permit process the best that he could. Most of the people were aware of the process having gone through it two years earlier. *Mr. Mastera submitted the petition into evidence as Exhibit A.*

Mr. Moore stated that most everyone that he spoke with, with the exception of the adjoining property owners, had no idea what was going on in concerns to this particular Conditional Use Permit application. Mr. Moore commented that he felt that in the future that subjects like this should be posted in the newspaper. Ms. Dowdy stated that the agenda for the meeting was sent to the local newspaper and radio station. Mr. Moore asked that in the future, when a public hearing was coming up with this type of item, that it be made a little more obvious and detailed. Chairman Whitaker stated that it is a difficult situation to inform everyone other than those required by KRS and he also agreed that the general public would not understand what was going on when they saw it in the newspaper; however, if there were an article in the paper, it could possibly be more explanatory to the public.

Other neighbors voiced their concerns of multi-family use both now and in the future, excessive cars parked in the yard and in the street, a lot of beer cans in the yard, cars turning around in other property owner's yards and driveways, as well as possible drug trafficking on 13th, a neighboring street. Another issue of possibly three people living in the house was brought up, the third person being a girl that is a friend of Michael J. Watson's.

Ms. Dowdy stated that the city does not look at the ownership, whether or not a person pays rent. They look at the occupancy and the fact that there are non-related persons living in the home. There is not a problem with the son living in his brother's home; the issue at hand is a non-related person living there. Chairman Whitaker closed the public hearing.

Ed Davis made a motion to deny the Conditional Use Permit based on the fact that non-related persons residing on the premises is not a permitted use in an R-2 zone. Andy Dunn seconded the motion and it carried with a 4-0 vote. Mr. Berry was given 30 days to move out.

Questions and comments: Mr. Davis mentioned that at the Planning Commission meeting the night before, suggestions were made (with reference to the area west of N. 16th Street being looked at in changing from R-2 to R-4 which includes Miller, Farmer and Olive) that the BZA look at a "freeze" of any Conditional Use Permit in that area. Mr. Davis did not think that would be a practical thing for the BZA to do. Mr. David Roberts said that it was a recommendation that the Board might take into consideration. Mr. Pitman stated that he thought that the interpretation was that since the Planning Commission did not have the authority to "freeze" Conditional Use Permits that they wanted to reiterate the notion that the BZA look closely at Conditional Use Permits. Mr. Davis stated that the concern was that many of the residents did not want R-2 areas to turn into R-4 zones by Conditional Use Permits. Chairman Whitaker stated that each situation should be taken on a case-by-case basis.

Ed Davis made a motion to adjourn. Andy Dunn seconded the motion and it carried with a 4-0 voice vote. The meeting adjourned at 6:20 p.m.

Chairman, Bill Whitaker

Recording Secretary, L. Peyton Mastera