

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, AUGUST 22, 2007
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, August 22, 2007 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5th Street.

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

Board Members Absent: Andy Dunn

Also Present: Candace Dowdy, Peyton Mastera, Mike Pitman, David Roberts, Kristen Taylor, Reta Gray, Paul and Vickie Garland, Attorney Jeff Roberts, Danielle Tolley, Robert Clendenan, Charlie Bazzell, Cody Dorres, 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 July 18, 2007 Regular Meeting: Ed Davis made a motion to approve the minutes as presented. Helen Spann seconded the motion and it carried with a 5-0 voice vote.

Chairman Whitaker stated that the applicants for Community Youth Services had withdrawn their application.

Public Hearing to Review the Conditional Use Permit to allow storage units behind the Murray Business Center – Planned Development Project - 1900 North 12th Street – Paul Garland: Candace Dowdy pointed out the proposed PDP on a Power Point presentation. The preliminary site plan shows three storage units with access to the buildings through the entrance of the Murray Business Center off of the HWY 641 frontage road. In a B-2 zoning district, a Planned Development Project is only allowed as a Conditional Use. The property adjoins Riviera Mobile Home Park to the south which is zoned R-3A where there is a requirement to have screening. The existing screening for the property is a tree line and fencerow, which is sufficient. To the east, the adjoining properties are B-2; therefore, screening is not required despite the use of the properties being residential. Chairman Whitaker asked if the property owners were aware that there would not be any screening. Ms. Dowdy stated that Mr. Thorn had been to the Planning Department and she went over this item with him. Ms. Dowdy explained that Mr. Garland was aware the BZA or Planning Commission might possibly require screening along the east side of the storage units. The Planning Commission agreed the night before that screening was not that beneficial along the rear since the building itself serves as a screen and that there will be no access on the side of the storage building closest to the residential lots; although, there will be a 25-foot grassy area from the back of the storage units to the property lines of the adjoining residential properties. All setback requirements will be met.

David Roberts, Director of Planning and Engineering, addressed the permanent easement on the east side of the property. Mr. Roberts explained that it is not the intent of the easement to be used for access.

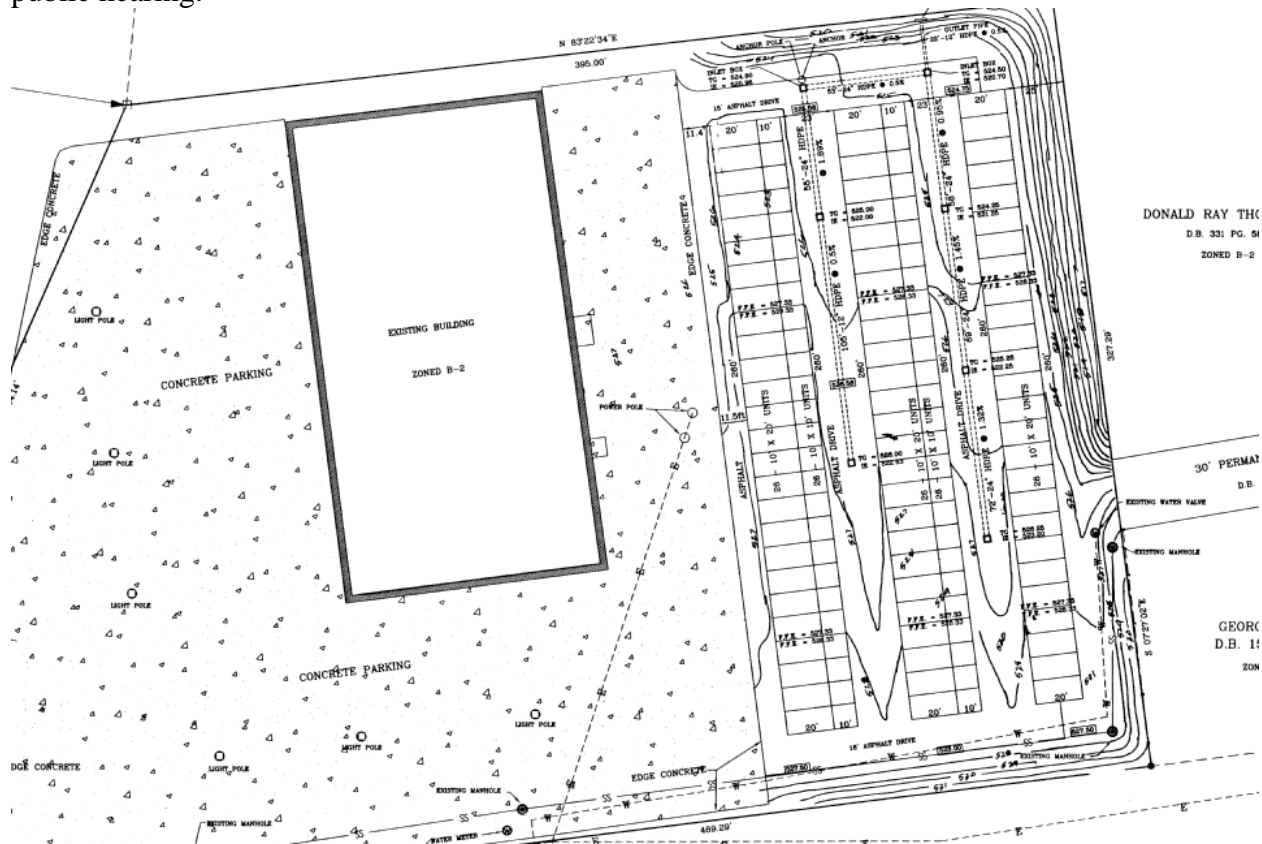
Ms. Dowdy explained that the first set of storage buildings will be located 11.5 feet from the concrete slab on the east side of Murray Business Center. The preliminary plat was reviewed and approved at the Planning Commission Meeting contingent upon it meeting all city regulations. West Kentucky Rural Electric and West Kentucky Rural Telephone have recently moved into offices located on the southeast corner of the Center. Employees are currently parking to the back of the building, which is the east side. Mr. Garland indicated in the Planning Commission Meeting that if there were any issues with traffic flow that there were plenty of parking spaces along the front and south sides of the building.

Ms. Dowdy pointed out the area where the underground storm water detention is being provided. Mr. Whitaker asked if there would be any problem with run off on the Thorn or Catlett property. Mr. Roberts stated that the flow on that particular site is generally from the south to the north running into an existing ditch to the east and going under North 4th Street. He also stated that there would not be any changes in the current drainage patterns.

Chairman Whitaker opened the public hearing and asked for anyone wishing to speak in favor of the application. Chairman Whitaker swore in Mr. Paul Garland, P.O. Box 65. Mr. Garland stated that he had no plans for putting up any additional signage since he already had the existing sign in front of Murray Business Center. Ms. Dowdy stated that the current signage meets the maximum square footage for what is allowed for a monument sign; however, if Mr. Garland did decide to add any signage, a sign would be allowed on the end of one of the storage units. Mr. Garland then stated that he would have lighting sconces on each building for building identification purposes. There are no plans for a fence at this time, but Mr. Garland said if he did install a fence, it would be gated and would require a scan card. Mr. Seiber asked if Mr. Garland had any other storage units and questioned the desire for people to store items. Mr. Garland stated that he had owned storage units since 1989 and that he currently owns another storage unit, Murray Lock and Store, which is located across Hwy 641 from the Murray Business Center. Mr. Garland explained that his storage units were full all the time. He then explained that his reason for wanting to construct these units was to help improve the looks of the property. He commented that the lot was not large enough for many things, but storage units would complete the Center and clean up the lot.

Helen Spann stated that she had voted "No" at the previous BZA meeting. She explained that when this area was rezoned as business, she felt that storage units were not envisioned as a business. She voiced that every major street coming into Murray has storage units instead of something that was more business oriented. Mr. Garland explained that the storage units would be more visually appealing than some of the surrounding properties, some of which had grown up grass and others that had junk trucks and dozers sitting around. He stated that the storage units would not actually be next to Hwy 641, they would be behind the Murray Business Center, which is a very nice looking building.

Chairman Whitaker asked if there was anyone else in favor of the project that would like to speak. There was no one. No one spoke against the project. Chairman Whitaker closed the public hearing.



Scott Seiber made a motion to approve the Conditional Use Permit application to allow the storage units behind Murray Business Center with the condition that the 30 ft. easement behind the property not be used for egress and ingress and that the 25' grassy area be properly maintained. Ed Davis seconded the motion and it carried with a 3-2-vote. Helen Spann and Bill Whitaker voted no.

Chairman Whitaker noted to the Commissioners that the next item on the agenda was tabled from the previous month. **Helen Spann made a motion to remove from the table the review of the Conditional Use Permit at 1105 Poplar Street for James D. Tolley. Darren Jones seconded the motion and it carried with a 5-0 voice vote.**

Review of Conditional Use Permit – 1105 Poplar Street – James D. Tolley: This permit originally had a condition that it be reviewed in six months. (See BZA minutes from January 2007). The review was originally scheduled for the July 18, 2007 meeting, but it was tabled until August 22 because Mr. Tolley was unable to attend.

The applicant, Mr. James D. Tolley purchased the home for his daughter, Danielle Tolley, to live in while attending MSU. This is located in an R-2 zone. Only by a conditional use permit may

non-related persons occupy the premises in a single family residential district. Ms. Dowdy stated that the adjoining property owners were notified of the review, as a courtesy, and that there had been one inquiry concerning this property. The conditions placed on the permit included the number of vehicles that could be parked in the driveway at any given time, the number of people that could occupy the premises, and stated that no outside activity was permitted past 10:00 p.m. Ms. Dowdy stated that the previous owner of the property across the street had given permission for company of 1105 Poplar to park in her driveway. This property has now been sold. Mr. Mastera noted that the new property owner was not aware of the Conditional Use Permit but he explained it to them.

Attorney Jeff Roberts spoke in the absence of Attorney Chip Adams, who represents the Tolley's. Attorney Roberts stated that he had talked to some of the adjoining property owners. Ms. Sarah Vaughn said that the girls occupying the home had been very sweet to her and she had no problems with the Conditional Use Permit continuing. She did not sign any document because of her visual difficulty. Ms. Cathy Hart also did not see any problems with the Conditional Use Permit continuing and she signed a document stating that. *Mr. Mastera submitted the document into evidence as Exhibit A.* The Murray Police Dept. had also been contacted to see if there had been any complaints made since the Conditional Use Permit had been put in place. Chief Ken Claud addressed a letter to Chip Adams stating that there were no complaints against the two residents. *Mr. Mastera submitted the document into evidence as Exhibit B.* Attorney Roberts also spoke with Mr. Robert Clendenan. Mr. Clendenan had voiced concerns of a gentleman that had been staying at the location this summer. He said that he preferred to work the concerns out with the neighbors instead of calling the police department. He did call the parents one time and that appeared to correct that particular problem. Attorney Roberts stated that these are college students and there are going to be people coming and going out of the home compared to a single residential home where people will be coming and going out of that home. Attorney Roberts said that the five-vehicle rule was being complied with. In summary, most of the neighbors think the rules were being complied with; therefore, the Tolley's are asking that the Conditional Use Permit be continued as it is currently written.

Scott Seiber stated that the permit allows Ms. Tolley to have one non-related person reside with her. If someone else is occupying the premises other than Ms. Tolley and another person, it would be a violation of the conditional use permit.

Chairman Whitaker asked if anyone else wished to speak in favor of the application. No other person spoke in favor of the application and Chairman Whitaker asked for anyone wishing to speak in opposition to the application.

Chairman Whitaker swore in Mr. Robert Clendenan of 1103 Poplar Street. Mr. Clendenan said that he would like for the permit to continue because he has no problem with the girls; however, he did have a problem with the gentleman (Danielle's boyfriend) staying there during the summer. Mr. Clendenan stated that the gentleman was constantly sneaking in and out. He also added that Morgan's boyfriend had also started staying over. Mr. Clendenan wants the boyfriends staying the night to stop. He has no problem with them visiting, but does not want

the boys living there. He is concerned as to what defines living there and just staying overnight on an occasional basis.

Danielle Tolley of 1105 Poplar Street was sworn in. Ms. Tolley stated that the gentleman that was staying overnight was her boyfriend. He had some problems at home, so she and Ms. Williams offered him their couch. Ms. Tolley said that her boyfriend lives at 604 South 11th Street with his parents. Ms. Tolley explained that she and Ms. Williams do not appreciate the surveillance of Mr. Clendenen. Mr. Seiber then commented that he had no problem with someone spending the night on occasion, but when it turns into two months, he would consider that this person might be living there permanently.

Mike Pitman, attorney for the City of Murray, stated that when the original Conditional Use Permit was granted it was said to expire at the time that Ms. Tolley completed her studies at MSU, possibly in 2010. The conditions were no more than five cars in the driveway, no more than one other non-related person to occupy the premises, no complaints, and a review in six months to see if there were any complaints and to see if there had been compliance. Mr. Pitman stated that the Board needed to: a) decide if there has been a violation to the conditional use permit and revoke the permit, b) decide if there has been a violation, but there is a plan to move forward, or c) to find that there had been no violation.

Mr. Seiber said that there was no doubt that there had been a violation and from that perspective the Board did have the right to void the Conditional Use Permit; however, he is inclined not to cut off the Conditional Use Permit at this time.

Scott Seiber made a motion to allow the conditional use permit as is, with another six month review. Mr. Seiber noted that there should be an admonishment to the girls and that they need to adhere to the required conditions. **Darren Jones seconded the motion and it carried with a 5-0 vote.**

Public Hearing to review Conditional Use Permit to allow two additional non-related persons to occupy the premises in an R-2 zoning district – 1403 Olive Boulevard – University Church – Charlie Bazzell: Ms. Dowdy showed pictures of the home on Power Point and stated that University Church of Christ owned the property on the corner of Olive Boulevard and 14th Street. In 2001, the University Church of Christ was granted a conditional use permit to house up to four (4) non-related persons at this location. The basement has recently been renovated with accommodation for two (2) additional students. One of the boys moved in prior to their knowledge of this problem and the other one moved in just recently. The Zoning Ordinance states that a group of not to exceed four persons that are non-related can occupy the premises, with a conditional use permit in an R-2 zone. The University Church of Christ would like to apply for a Conditional Use Permit to allow up to six (6) non-related persons to occupy the premises.

Chairman Whitaker opened the public hearing and asked for anyone wishing to speak in favor of the application. Chairman Whitaker swore in Mr. Charley Bazzell, 1614 Tabard Drive. Mr. Bazzell stated that in the meeting of 2001, when four non-related persons were allowed to

occupy the premises, there were those in attendance that are no longer apart of University Church. Had they known that the church had been granted a conditional use permit in 2001, they would not have moved in two more guys over the summer. One of their church members, who had been assigned the duty of looking at where the church might be at risk, discovered the violation when he was looking through the city ordinances. As soon as this was brought to the Church's attention in mid-July, they began to act on it in order to be in compliance. Mr. Bazzell feels that he might be asking for something that the City cannot do and said the intention may be to try and get the property rezoned to R-4 where six people could legally live. He does not know the answer but is looking for a resolution to this so they will not have to kick the last two boys out. Mr. Bazzell further explained that there may or may not be six young men living there at one given time. If the Church feels the young men have leadership qualities and meet their criteria, they will be allowed to live there; however, if there are only two that apply and are qualified, then only two will be living there. The Church's intent is not to just fill the facility. The young men living there have housekeeping and ministry responsibilities within the home and do not pay rent.

Chairman Whitaker swore in Cody Dorres of 1403 Olive Street. Mr. Dorres currently lives at the premises and he stated that the UCSC is an incredible deal. He feels the guys are chosen for their leadership qualities, to help maintain the building and to help people at the church. Whether it is to go out to MSU to bring people into their church or to help the ones already there, he feels it is a great ministry.

There was no one that spoke against the application. Chairman Whitaker closed the public hearing.

Mr. Pittman stated that this application is different than most applications in that there is a ministerial component. Ed Davis stated that he would be an advocate for a zoning change. David Roberts stated that a zoning change may not be the answer and that sometimes they are difficult situations. Chairman Whitaker explained that the Board is supportive; however, since this involves ministerial activities, different considerations will have to be made. After much discussion, the Board decided to table the application at this time until the Planning Staff has time to do more research on this item and then it will be brought back before the Board.

Ed Davis left the meeting at 6:00 p.m.

Scott Seiber made the motion to table the application for a Conditional Use permit until Planning Staff collects more information. Helen Spann seconded the motion and it carried with a 4-0 voice vote.

Questions and comments:

- Discussion of possible changes to the fee schedule: Ms. Dowdy showed the proposed fee increases on a Power Point presentation. She explained that the current fees are listed in the Zoning Ordinances. The proposed increased rates are for Planning and Zoning fees. Ms. Dowdy said that these fees had not been increased since 1990 and they had been looked at for many

months in order to bring them up to date in comparison to other communities. Ms. Dowdy further explained that the City was not trying to make money, that these fee increases were necessary because the City had actually been absorbing these costs. The services that are subject to increase are listed below with their current and proposed costs.

	<u>Current</u>	<u>Proposed</u>
Board of Zoning Adjustments Special Called Meeting	\$75.00	\$330
Conditional Use Permit Fee	\$50.00	\$100
Dimensional Variance Application	\$25.00	\$100
Conditional Use & Dimensional Variance Recording (as required by County Clerk)	\$15	\$15
Planning Commission Special Called Meeting	\$150	\$450
Zoning Amendments or Changes (non-refundable)	\$150	\$300
*Planned Development Project Process (Total Fees)	\$215	\$385
Sign Permit	\$25	\$50
Bond Posted for Removal of Temporary Sign	\$25	\$25
Subdivision Preliminary Plat Review	\$25	\$75
Subdivision Final Plat Review	\$25	\$75
Recording of Plat (as required by County Clerk)	\$20	\$20
Zoning Ordinance with Small Zoning Map	\$8	\$20
Subdivision Regulations	\$5	\$20
Administrative Appeal	---	\$50
Review of minor subdivision plat (by Planning Comm.)		\$25

- Discussion of Transient Businesses: Ms. Dowdy stated that the Planning Commission had discussed transient businesses at the previous night's meeting. She explained that transient businesses are temporary or roadside businesses that may or may not be seasonal and are usually mobile concession stands type businesses, which may sell rugs, fireworks, blackberries, sunglasses, food, etc. Some questions trying to be addressed are what zones should these be allowed and some minimum guidelines for operation. Currently each transient business is evaluated on an individual basis when they apply for business licenses. The majority of these businesses have been operating on Main Street, 12th Street and at The Farmer's Market, downtown. Ms. Dowdy noted that if schools were selling services or donuts, they were non-profit organizations, and they did not have to apply for business licenses. However; if you were a vendor that was set up to make money, you are required to purchase a business license. Ms. Dowdy closed by urging the Board to collect some thoughts concerning this, and to please let the Planning Department know of their ideas.

- Discussion of Conditional Use Permit Application - 1636 Olive Street – Community Youth Services: Mr. Darren Jones asked about the CUP application for Community Youth Services and why they removed their application. Ms. Dowdy stated that the Planning Department was contacted by legal counsel of ResCare earlier in the day. In short, after reviewing the City of Murray's Zoning Ordinance, they felt like there would not be an opening for this type of facility. Therefore, they did not want to pursue the Conditional Use Permit at this time. Mike Pitman stated that he had spoken to their counsel as well and that since this particular business would have been for profit, the application probably would not have been permitted in an R-2 zone.

The type of setting that they had in mind was for young girls in a group home, and this would seem to fit more appropriately in an R-4 zone.

Scott Seiber made a motion to adjourn. Darren Jones seconded the motion and it carried with a 4-0 voice vote. The meeting adjourned at 6:30 p.m.

Chairman, Bill Whitaker

Recording Secretary, Reta Gray