

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, SEPTEMBER 19, 2007
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, September 19, 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, Darren Jones, Tom Auer, and Bill Whitaker

Board Members Absent: Andy Dunn and Helen Spann

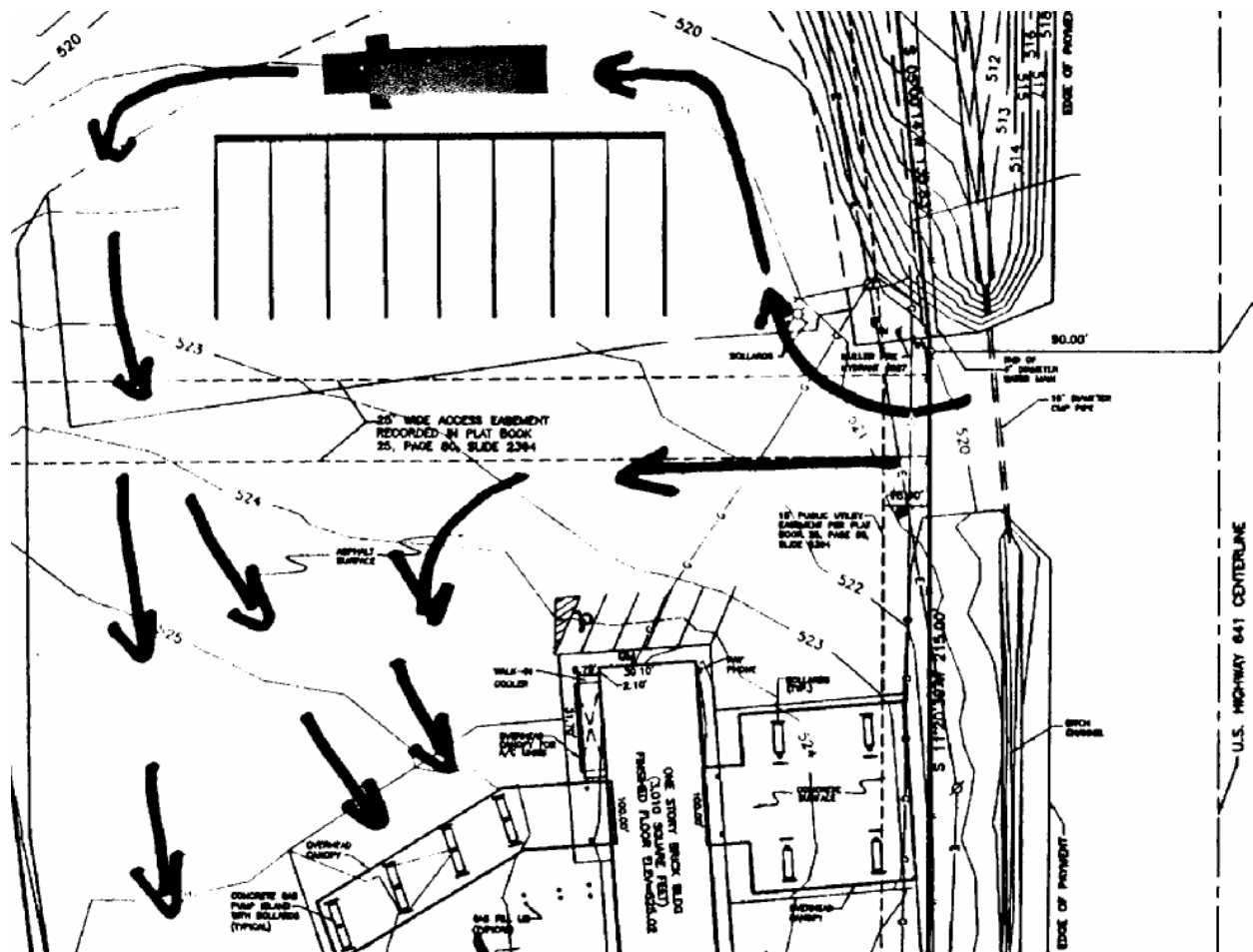
Also Present: Candace Dowdy, Peyton Mastera, Mike Pitman, David Roberts, Reta Gray, Mayor Rushing, Matt Mattingly, Rick Fritschle, Shane Henley, Bob Bradley, Marsha Dorgan, Mike Keller, Mary Anne Medlock, Robert Johnson, James Schwartz and Public Audience

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

Candace Dowdy swore in new BZA member, Tom Auer.

Approval of minutes from the August 22, 2007 Regular Meeting: Scott Seiber made a motion to approve the minutes as presented. Ed Davis seconded the motion and it carried with a 5-0 voice vote.

Dimensional Variance Request for a Freestanding Sign – 2185 US HWY 641 North – Interstate Scales: Peyton Mastera pointed out the proposed sign location on a PowerPoint presentation. In May 2006, Max Arnold and Sons applied for a variance to place an underground weigh scale for trucks and an additional free-standing sign to the south side of the BP gas station. The request was denied based upon traffic flow issues. Following that meeting, the state installed a turning lane at both entrances to help alleviate traffic; thus, Max Arnold and Sons reapplied for the same variance in December 2006. That application was denied for the same reasons. This application has a site plan attached showing a relocation of the weigh station to the north of the BP station. Mr. Mastera pointed out the proposed flow of truck traffic as they weigh, fuel up and exit the premises. In essence, this variance request is for an additional freestanding 72 square foot sign (6' x 12') with a height of 23 feet 4 inches. The placement of the weigh scale is to be located in the rear yard, which is permissible under the zoning ordinance as it is considered an accessory structure. Max Arnold and Sons still has to apply for a building permit and all issues concerning the placement of the weigh scale will be handled by the city. Mr. Mastera explained that the applicant, Mr. Rick Fritschle was aware that since the weigh scale is located in the rear yard the BZA cannot make a ruling to keep it or not, but since Mr. Fritschle has been before the Board on two previous occasions concerning the placement of the scale, he wanted to bring it before the Board "in good faith."



Chairman Whitaker swore in Mr. Rick Fritschle, 7409 East Olive Street, Evansville, Indiana. Mr. Fritschle, a representative of Max Arnold and Sons, stated that they had experimented by moving tractor & trailers on the site to see how they could revise their original plan and make the idea of a weigh station a reality. They came up with a plan to move the weigh scales from the south side of the property to the north side, which should alleviate the traffic flow issues. Mr. Fritschle also stated that by making this change, parking spaces were cut. He said there were presently contractors and others that were using the parking spaces and not the facility, and they feel that the offset of being able to put the scales in is worth giving up some of the parking. Mr. Fritschle said that it was in his company's best interest to have an easy ingress and egress for use of the scales. He added that the plan had highway jersey bearers on the backside of the trailer parking so that truckers would not back into the scales. Mr. Fritschle noted that this is not a full-service truck stop with shower facilities; it is just a fueling location. Therefore, there is not the need for a lot of extra parking. Candace Dowdy asked when a truck was on the scale, how much stacking was available for other trucks as they entered the facility. Mr. Fritschle said that there is room for one truck to be stacked and stated that a truck is actually on the scales for only 18-25 seconds; therefore, there should not be a stacking issue. The proposed sign is a single faced sign that will be internally illuminated.

Scott Seiber made a motion to approve the variance for an additional free-standing sign as it will serve as an identification for out of town customers not familiar with the gas station, improving visibility, and based on the findings that it will not adversely affect the public health safety welfare, will not alter the essential character of the general vicinity, will not cause a hazard condition to the public and will not allow an unreasonable circumvention to the requirements of the public regulation. Ed Davis seconded the motion and it carried with a 5-0 vote.

Dimensional Variance Request for a Freestanding Sign – 316 North 12th Street – Shane Henley: Peyton Mastera pointed out the site on a PowerPoint presentation. Mr. Shane Henley, the property owner, is requesting a variance to keep the existing pylon sign as well as a 3' 5" height variance. The recently revised 12th Street ordinance states that the signs are to be of monument style and no more than 10 feet tall. The existing pylon sign is 24 square feet in size and 13 feet 5 inches in height. Mr. Mastera stated that a letter was submitted to all property owners in January 2006 explaining the new sign ordinance.

Chairman Whitaker swore in Mr. Shane Henley, 1603 Wiswell Road. Mr. Henley stated that his new tenant, Liberty Tax Business, would like to keep the existing sign frame that West Kentucky RECC had left when they vacated the premises. Scott Seiber stated that he felt if a variance was granted and Mr. Henley was allowed to keep the pylon sign, the Board would be missing the opportunity to change one of the 12th Street pylon signs to a monument sign. He also commented that the sign could be cut by 3 feet 5 inches and configured to appear as a monument sign. Mr. Seiber also added that he would like to see the sign attractive, functional and safe. Mr. Mastera stated that one of the issues Mr. Henley asked about was visibility of the sign and being in the 50' clear zone. Ms. Dowdy stated that the Planning Staff did not feel that a monument sign would cause any visibility issues at this site if placed in the same location that the current sign is located. For the sign to remain in its current location, a side and front setback variance would need to be granted. After much discussion concerning the changes to be made to the existing sign to make it appear to be a monument sign, Chairman Whitaker requested that the motion be tabled until a drawing is presented of the proposed sign.

Ed Davis made a motion to table the request for the dimensional variance for a freestanding sign until next month's meeting on October 17th. Darren Jones seconded the motion. The motion carried with a 5-0 voice vote.

Darren Jones made a motion to remove the request of Bob Bradley for Conditional Use Permit at 1626 Miller from the table, which had been tabled at the June 2007 meeting. Scott Seiber seconded the motion and it carried with a 5-0 voice vote.

Public Hearing to review the Conditional Use Permit application for four non-related persons to occupy the premises – 1626 Miller – Bob Bradley: Peyton Mastera showed pictures of the property at 1626 Miller Street on a PowerPoint presentation. Mr. Bob Bradley, current owner of the property, has applied for a Conditional Use Permit to be granted for up to four non-related persons to occupy the premises in an R-2 zoning district. Normally conditional use permits are granted for specific tenants, Mr. Bradley would like to request an "open ended"

permit where he would not have to come before the Board each time he rents his property to a different tenant.

Chairman Whitaker opened the public hearing and asked for anyone wishing to speak in favor of the application. Chairman Whitaker swore in Mr. Bob Bradley, 247 Poplar Drive, Buchanan, Tennessee. Mr. Bradley stated that he originally bought the house for his son and fiancé to live in. Immediately after purchasing the house, signs went up in the surrounding neighborhood concerning the rezoning public hearing west of N. 16th Street from R-2 (single family residential) to R-4 (multi-family residential). After meeting with Ms. Dowdy, Mr. Bradley discovered that according to the law, his son and fiancé could not live there together until they were married. Then after speaking to others concerning this matter, Mr. Bradley was told that this was a “gray area”. Mr. Bradley then decided to find his son and fiancé somewhere else to live until he got married. Next Mr. Bradley proceeded to try and rent this property for single family use. He explained that after he put a sign in the yard and started receiving phone calls concerning the property, he seemed to be in the same situation with renting. He was receiving calls from college students that wished to live with other non-related persons. He also received calls from families that showed an interest until they found out the surrounding properties were being used for multi-family purposes consisting of mainly college students, which did not present a family atmosphere. Thus, Mr. Bradley decided to apply for the Conditional Use Permit.

Mr. Bradley expressed his disappointment in the failure of the recent request to rezone the surrounding properties from R-2 to R-4. He stated that when the neighborhood was mailed surveys a year ago, from the 18 houses on Miller Street, there were three respondents against the rezoning. There were five that didn't respond at all and out of those five, three were either grand fathered in or were currently using their property as an R-4 residence. He feels that single, unmarried renters are made to lie in order to live together legally in Murray and landlords are made into criminals. He stated that he had lived in Murray for 25 years and that Miller Street and surrounding blocks had always been used for multi-family use.

Peyton Mastera submitted into evidence an Email he had received from Carole Dolack supporting the application.

Chairman Whitaker asked if anyone would like to speak in opposition of the application. Chairman Whitaker swore in Marsha Dorgan, 1622 Miller Avenue. Ms. Dorgan acknowledged Mr. Bradley's request but explained that she would like for Miller Avenue to remain single family residential.

Chairman Whitaker swore in Mike Keller, 1635 Olive Street. Mr. Keller stated that he was speaking for Ms. Gibson, Ms. Humphries, and Ms. Rogers, as well as himself, whom are all adjoining property owners. Mr. Keller stated that he personally had nothing against college students; however, as a rule, they tend to be noisier later in the day, and they tend to have more traffic coming and going. He feels that a family living in the home would not bring along the potential problems that college students bring. R-2 zoning guarantees the homeowners some recourse against problematic non-family related households. Mr. Keller concluded by saying

that most of their neighborhood is well kept and a very pleasant place to live and he would like to keep it that way.

Peyton Mastera submitted two letters as evidence that were in opposition. One was from David Keller, property owner at 1635 Olive Street and the other was from Ms. Fredda Rogers at 1624 Miller Street.

Chairman Whitaker swore in Mary Anne Medlock, 1306 Poplar Street. Ms. Medlock stated that even though she did not live in the area, she felt she had something to contribute. When Conditional Use Permits are approved in R-2 residential zones, it seems to encourage other property owners to come into these neighborhoods to hope to seek or not to seek Conditional Use Permits. Therefore, she encouraged the Board to deny the permit.

Chairman Whitaker gave Mr. Bradley an opportunity for rebuttal. Mr. Bradley stated that most of the opposition singled out college students and that his request is not about college students, it's about unmarried non-related individuals. He said that he invests a lot of his money in real estate and he intends for that investment to be protected. He feels that his house is a single family home, in a single family neighborhood, in an R-4 situation. Chairman Whitaker told Mr. Bradley the definition of family in the ordinance doesn't necessarily mean married, people that are sharing resources and living as a family would qualify them. This would mean Mr. Bradley's son and future wife would certainly fit. Mr. Bradley said that he would like a definitive answer, a yes or no, whether his house would be allowed the Conditional Use Permit.

Chairman Whitaker asked if anyone wanted to rebut on the opposition side. There was no one. Chairman Whitaker closed the public hearing and opened up for Board discussion.

Mr. Mastera explained that a little over a year ago, 130 property owners were surveyed asking if they would be in favor of rezoning their property to R-4 (multi-family residential). Based upon the survey results and the information gathered by the Planning Commission, the proposed rezoning boundary was drawn. Ms. Dowdy stated that two public hearings were held. At the second public hearing, there was no one there to speak in favor of the rezoning; however, there were several that spoke in opposition. Based upon the information gathered and presented to the Planning Commission, they decided to make a recommendation to the City Council to leave the current properties in the proposed area as R-2 zone. Mike Pitman added that the Planning Commission had voted 8-1 in favor of not rezoning these particular pieces of property. The Planning Commissioners also encouraged the Board of Zoning Adjustments to look carefully before granting any other Conditional Use Permits in this area. Tom Auer asked what would occur if a person was in violation. Mr. Mastera stated that every one had to be looked at on a case-by-case basis. The property owner is contacted to see if they were grand fathered in or if some were living in violation. If they are living in violation, they can either come into compliance by making them move out or have them apply for the Conditional Use Permit.

Ed Davis made a motion to deny the request of Mr. Bob Bradley to allow up to four non-related persons to occupy the premises in an R-2 zoning district. Scott Seiber seconded the motion and it carried by a 5-0 vote.

Scott Seiber said that there had been lots of information brought forth in this meeting and he doesn't think it's enough just to deny the permit in an R-2 zone. He would like to have a discussion at some point as to what is going on in these neighborhoods. Ed Davis also voiced his concerns and questions. Chairman Whitaker added that when someone tries to do the right thing by applying for a Conditional Use Permit, they seem to be the ones that are punished. Mike Pitman suggested that there be certified letters sent out on the City's letter head to each property owner in this area notifying them that because of the attention in this particular zone, there is a concern about whether the property is being appropriately used. If they are out of compliance and do not bring the matter into compliance, they are out of compliance with the ordinance; therefore, a suit can be filed. Then the burden will be put upon the property owner to come forward to prove that he has been grand fathered in. Ed Davis asked if there was a print out available with all of the addresses and property owners. Ms. Dowdy stated that information is collected from the PVA office. Mr. Bradley then stated that he did not feel that this issue was limited to Miller Avenue. He said that it was a citywide problem. He questioned how this problem could be addressed on a citywide basis. After much discussion, Chairman Whitaker stated that they needed to move on.

Public Hearing to review the Conditional Use Permit application to allow two non-related persons to occupy the premises in an R-2 zoning district– 1303 Poplar Street – Kyle

Johnson: Chairman Whitaker swore in Robert Johnson, 2080 Sharp School Road. Mr. Johnson was speaking in the absence of Kyle Johnson, his son. Mr. Robert Johnson stated that after hearing the previous discussion, he had several questions and would like to table his request.

Darren Jones made the motion to table the Public Hearing to review the Conditional Use Permit application at 1303 Poplar Street for Kyle Johnson. Ed Davis seconded the motion and it carried with a 5-0 voice vote.

Public Hearing to review the Conditional Use Permit application to allow two dwelling units in a B-3 zoning district – 401 Maple Street – James A. Schwartz: Candace referenced the property on a PowerPoint presentation. She stated that a Conditional Use Permit will allow single or multi-family residential uses in a B-3 down town zoning district as long as it is a part of the principle building either to the rear or above the principle use. There are currently two businesses in the downstairs. The upstairs of the building was used for a number of years as Mr. Schwartz's office; however, since Mr. Schwartz's office is no longer in existence, he would like to see if the Board would grant him a Conditional Use Permit to convert the upstairs space into two dwelling units. Ms. Dowdy stated if this should occur, the building would have to meet all city fire and safety codes.

Chairman Whitaker opened the public hearing and asked if anyone would like to speak in favor of the application. Chairman Whitaker swore in Mr. James Schwartz, 1533 Spring Creek Drive. Mr. Schwartz, property owner, stated that he had previously tried to rent the upstairs of his building. He found out that no one wanted to put a business upstairs; thus, he decided to turn this space into residential. Mr. Schwartz presented a drawing of the proposed apartments and explained the layout. He stated that the space consists of approximately 4000 square feet and

that he planned on dividing this into two apartments. Mr. Schwartz stated that it seemed to be the consensus of a lot of people that they would like to see apartments and some residential units in the downtown area and he feels that he has one of the prime buildings for this type of renovation. Mr. Schwartz continued by saying that this is going to be an expensive proposition and that he was not completely sure he was going to follow through with the construction of the apartments even if he was granted the Conditional Use Permit. A lot will depend on the costs of construction and bringing everything up to code. He added that since there were no other facilities like this in Murray, he wasn't even sure how this would go over. He concluded by asking the Board if he was granted the application if he would be able to rent one of the units out before he actually finished the second one. He stated that one unit would not require much construction in order to get it ready to open.

Chairman Whitaker asked if anyone wanted to speak in opposition. There was no one. Mike Pitman asked if the Main Street Committee had any ideas that would be applicable to downtown apartments or lofts. Ms. Dowdy stated that she serves on the Main Street Board of Directors and that they are looking into converting the upstairs of the building that Main Street owns into living quarters, if money becomes available. She also added that a lot of cities in Kentucky, that are involved in Main Street Programs, want to do this.

Scott Seiber made the motion to approve the Conditional Use Permit and to allow the opening of one unit before the completion of the second unit, and that it meets all requirements of the City. Ed Davis seconded the motion and it carried by 5-0 voice vote.

Questions and comments: There was concern and discussion pertaining to the situation on Miller Avenue. Everyone agreed that something needed to be done. The zoning ordinance has been tried and conditional use permits have been able to grant non-related individuals to live in R-2 districts; however, it is going to be difficult to earmark this particular location, while this type of situation is going on throughout the city. Mike Pitman suggested the possibility of letters being sent to the property owners asking how their property was being used and if they are not in compliance, to file a complaint against that property owner.

Ed Davis made a motion to adjourn. Scott Seiber seconded the motion and it carried with a 5-0 voice vote. The meeting adjourned at 7:45 p.m.

Chairman, Bill Whitaker

Recording Secretary, Reta Gray