

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

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

**Board Members Present:** Scott Seiber, Darren Jones, Helen Spann, Tom Auer, and Bill Whitaker

**Board Members Absent:** Andy Dunn and Ed Davis

**Also Present:** Candace Dowdy, Peyton Mastera, Mike Pitman, David Roberts, Reta Gray, Mayor Rushing, Matt Mattingly, Barbara Campbell, Greg Taylor, Charley Bazzell, and Tung Dinh.

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

**Approval of minutes from the September 19, 2007 Regular Meeting: Darren Jones made a motion to approve the minutes as presented. Scott Seiber seconded the motion and it carried with a 5-0 voice vote.**

**Scott Seiber made a motion to remove the request for a Conditional Use Permit of University Church of Christ from the table, which had been tabled at the August 2007 meeting. Darren Jones seconded the motion and it carried with a 5-0 voice vote.**

**Public Hearing to Review the Conditional Use Permit Application to Allow Two (2) Additional Non-Related Persons to Occupy the Premises in an R-2 Zoning District – 1403 Olive Boulevard – University Church – Charley Bazzell:** Ms. Dowdy referred to the original application for conditional use permit by the University Church of Christ. The University Church of Christ owns the property at 1403 Olive Boulevard. 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 accommodations for two (2) additional students. 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. The Board decided to table the application in August until the Planning Staff had time to do more research on this item to see if there were any means for the ordinance to allow more students to occupy the premises. Ms. Dowdy stated that after conferring with the City Attorney, they were not able to find anything in the ordinance that would allow more than four (4) non-related persons in an R-2 zoning district. Ms. Dowdy stated that when she had explained this to Charley Bazzell, representative for the University Church, Mr. Bazzell had asked that the two (2) extra students that are now occupying the premises be allowed some extra time before having to find housing elsewhere during the middle of the school

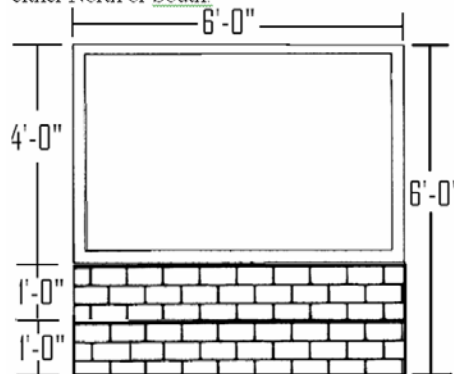
semester. Scott Seiber asked when and how the number four (4) was chosen for the number of non-related persons to occupy the premises in an R-2 zone. Ms. Dowdy stated the ordinance was adopted by the City Council in 1992 and there was no record as to how that number had been determined. Mr. Bazzell asked if there were any other options that the Church would have in order to keep the six tenants in the premises. Mike Pitman, attorney, stated that the only option would be to file an application to rezone this property to R-4.

**Scott Seiber made the motion to deny the application for a Conditional Use Permit and to allow current students to remain until July 1, 2008 contingent upon building inspection that will insure the safety of the residents. Helen Spann seconded the motion and it carried with a 5-0 vote.**

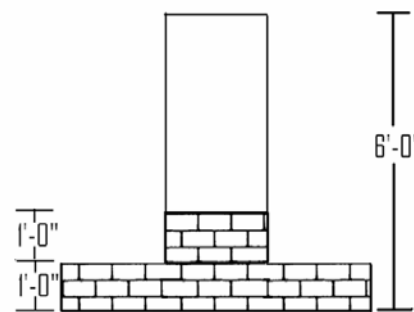
**Darren Jones made the motion to remove the dimensional variance request of Shane Henley for a freestanding sign at 316 North 12<sup>th</sup> Street from the table. Scott Seiber seconded the motion and it carried with a 5-0 voice vote.**

**Dimensional Variance Request for a Freestanding Sign – 316 North 12<sup>th</sup> Street – Shane Henley:** Peyton Mastera reviewed the previous request by Mr. Shane Henley, property owner, for a setback variance. At the September meeting, Mr. Henley was asking the BZA for permission to keep the existing sign and modify it to meet the current ordinance height. The BZA felt in order to keep in compliance with the current updated ordinance that the pylon sign would need to be modified to appear to be a monument style design. Mr. Mastera stated that Mr. Henley had met with him on numerous occasions since the September BZA meeting as well as with various sign companies and had come up with a revised plan for a sign. Peyton showed the pictures of the proposed sign on a PowerPoint presentation. He explained that Mr. Henley would remove the poles from the bottom of the current sign and build a brick base for the actual pylon sign to sit on, making the sign monument style. There will also be a planter bed to go around the base. Mr. Henley was not able to attend the meeting; however, he was asking for a front setback variance of four feet and a side setback variance of 10 feet. Scott Seiber asked if there would be a visibility problem with the proposed sign. Mr. Mastera referred to the photos from the previous month and confirmed that there would not be a visibility issue since the sign would be placed in the same site that the current sign is located.

Below is a rendering of the sign looking either North or South.



Below is a rendering of the sign looking either East or West with accompanying planter bed.



**Scott Seiber made a motion to deny the Dimensional Variance Request to keep the existing free-standing sign; but, Mr. Seiber made a motion to grant a four (4) foot front setback variance and a ten (10) foot side setback on the proposed monument style sign because the configuration of the lot made it difficult to put a monument sign of any kind at any other location on that particular lot, and upon the condition that Mr. Henley follows through with the construction of the monument style sign and continues to work with planning staff to make the sign landscaped area is functional and 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 . Darren Jones seconded the motion and it carried by a 4-1 voice vote. Helen Spann voted no.**

**Request for a Nine (9) Foot Front Setback Variance on a Monument Sign – 306 South 12<sup>th</sup> Street – Greg Taylor:** *Darren Jones recused himself from this item on the agenda.* Peyton Mastera referred to a PowerPoint presentation for pictures of the house located at 306 South 12<sup>th</sup> Street and stated that Mr. Greg Taylor, Attorney, is relocating his business to this address. Due to the makeup of the front yard area, Mr. Taylor is requesting a nine (9) foot front set back variance for the location of the monument sign. The property has a semi-circle driveway and grassy strip with a large tree (which Mr. Taylor would like to keep) where the sign will be located. Mr. Mastera stated that there would not be any visibility issues with the sign being at this location. Mr. Taylor presented copies of the proposed sign to the Board. The proposal was for a 5' x 8' foot sign with a brick base extending two feet on each side. There will be three businesses located in the building. There will be enough parking in the back of this site to accommodate each of the businesses. After reviewing the drawing of the proposed sign and hearing testimony from Mr. Taylor, the board suggested removing the brick base and reconfiguring the size of the sign to 5' x 7' for a better fit for the area. Mr. Taylor agreed with the suggestions of downsizing his sign for a more balancing and appealing look; therefore, he will only be requesting an eight (8) foot front setback variance.

**Scott Seiber made a motion to approve an eight foot front setback variance on a monument style sign with an amended size of the monument style sign not to exceed 35 square feet, contingent upon the planning staff continues to work with Mr. Taylor on making the sign more workable 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. Tom Auer seconded the motion and the motion carried with a 4-0 vote. Darren Jones returned to the meeting.**

**Public Hearing to Review the Conditional Use Permit Application to Allow a Daycare in a B-1 Zoning District – 1413 Olive Boulevard – Tung Dinh:** Peyton Mastera pointed out the property on a PowerPoint presentation. The applicant, Mr. Tung Dinh, currently operates a daycare facility (Wee Care Three) at 212 N. 15<sup>th</sup> Street. Mr. Dinh also owns the building located at 1413 Olive Boulevard, the former location of his fitness center where karate lessons were given. Mr. Dinh has relocated his fitness business to Coldwater Road, thus vacating the building

at 1413 Olive Boulevard. Mr. Dinh is requesting to move his daycare facility from 212 N. 15<sup>th</sup> Street to 1413 Olive Boulevard.

We Care Three's hours of operation will be from approximately 2:30 p.m. – 6:00 p.m. It is not an all day childcare facility, just one that takes in school children from a bus in the afternoons, Monday – Friday. We Care Three is licensed to keep up to twenty (20) children and will have 2 employees.

The City of Murray does not have specified parking requirements for daycare facilities; however, this facility has 6 parking spaces in front of the building. With the exception of the employees, the traffic into the facility (and parking) will be brief and used for parents picking up their children. Basically the operation will remain the same, only operating at a different location.

Chairman Whitaker opened the public hearing and asked if there was anyone that would like to speak in favor of the application. Mr. Tung Dinh, 90 Brittany Lane was sworn in. Scott Seiber asked Mr. Dinh what kind of parking arrangements were available for the employees of the daycare. Mr. Dinh stated that some of the employees currently park at Wee Care One (located on S. 15<sup>th</sup> Street) and one of the employees from Wee Care One could take them to Wee Care Three. Mr. Dinh confirmed that he had six parking spaces in the front of the building for parents to use for picking up their children.

Chairman Whitaker asked if there was anyone else that would like to speak in favor of the application. There was no one. Chairman Whitaker asked if there was anyone that would like to speak in opposition of the application. No one spoke against the application. Chairman Whitaker closed the public hearing and opened up for board discussion.

**Darren Jones made a motion to grant the conditional use permit to allow for Mr. Tung Dinh to operate a daycare facility at 1413 Olive Boulevard, located in a B-1 zoning district. Motion was seconded by Helen Spann and it carried with a 5-0 vote.**

*Darren Jones left the meeting at 6:10 p.m.*

**Compatibility Hearing for The Gates, Phase II Planned Development Project – Robertson Road South – Dale Campbell:** Candace Dowdy reviewed that in April 2007 this project had come before the Planning Commission and the Board of Zoning Adjustments for advisory compatibility. At that time, it was approved as a compatible project with the R-2 zoning area. The Gates is a single-family gated community development patio homes. The ordinance states under the PDP section that once the BZA approves compatibility, the developer has 60 days to present a preliminary plat to the Planning Commission for approval. This project was taken to the Planning Commission for an advisory meeting on October 16<sup>th</sup> and now it is being presented to the BZA for compatibility and conditional use. Phase II will be shown tonight.

**Scott Seiber made a motion that The Gates, Phase II is compatible for the area. Helen Spann seconded the motion and it carried with a 4-0 voice vote.**

**Public Hearing to Review the Conditional Use Permit Application for The Gates, Phase II Planned Development Project – Robertson Road South – Dale Campbell:** Candace Dowdy referred to the project on PowerPoint presentation. She stated that the preliminary plat for Phase I was approved by the Planning Commission in April along with the BZA approving the project as a conditional use in an R-2 zoning district. The final plat for Phase I was approved in June 2007 with 36 units. Ms. Dowdy stated that the residential planned development was originally platted as three phases. The developers have now decided to combine phases II and III, which will add 71 units or patio homes to the project. In addition, there is a three to four acre area that was originally platted in Fairfield Estates that will become a part of The Gates bringing the total of units up to approximately 126. Ms. Dowdy stated that the revised preliminary plat for Phase II is not ready at this time, since the additional acreage has been incorporated, but would be presented at the next meeting. The planning department is currently working on 911 addresses for the project. Each patio home will have a zero setback on one side and a minimum of 10 feet on the other side. There have been a few alterations on some of the floor plans because originally there had not been a means of egress from the bedrooms. At this point, the planning department is issuing five building permit applications for the developers to get started on the model homes for Phase I. This will be a gated community with two primary entrances into the project, which are: Robertson Road South as the main entrance and the second entrance on Traci Drive. There will be an emergency exit on Tanglewood and since Tanglewood and Traci Drive will both actually dead end at the gates, a turn around will be created at these accesses. The interior streets will be 24 feet wide and privately maintained by the Homeowners Association with a four (4') foot sidewalk constructed along the front of each patio home. There will be a total of 66 additional parking spaces throughout Phase II for guest parking.

Chairman Whitaker opened the public hearing and asked if anyone would like to speak in favor of the project. Barbara Campbell, 110 North 12<sup>th</sup> Street, was sworn in. Tom Auer asked Ms. Campbell how long it took people to get used to this type of community, the new discipline and the limitations. Ms. Campbell stated that people actually were looking for this type of life style. She added that people want to live this way today and it did not take them very long to adapt. She also said that there had been a lot of interest shown towards this development. Scott Seiber asked how guests would get through the gates. Ms. Campbell stated that as you drove up to the gates, there would be a panel that you would scroll down and select the person that you were coming to see. This would actually ring the house of that person. The person answers the phone and punches 9 and this will open the gate. (The homeowner has a different means of getting through the gates.) Chairman Whitaker asked about the ownership and the maintenance of the property. Ms. Campbell stated that each unit is deeded to the owner and that the Home Owner's Association would take care of the maintenance. Mr. Seiber asked about problems that should arise with the utilities, such as the sewer that may come up in the streets. Ms. Campbell stated that if the problem occurred on the owner's property, the property owner would be responsible and if it was out in the street, that the city would take care of that portion of it. This would be just like any other homeowners responsibility.

Mr. Auer asked if there were currently any functional Home Owner's Associations in Murray. Ms. Dowdy stated that Spring Creek Oaks has had one for years and that it was working quite well. She also added that newer subdivisions, such as Saratoga Springs and Hunter's Pointe,

have homeowner's associations. Mr. Auer then asked if these associations had to interact with the city. Ms. Dowdy explained that if the subdivision covenants or restrictions were more restrictive than the cities zoning ordinances, the subdivision rules would have to be adhered to. If they are less restrictive, they have to meet minimum requirements. If enforcements should become necessary, that would be the developer or Homeowner's Association responsibility. The City does not become involved unless there is a violation of the city ordinances or regulations.

Ms. Dowdy stated that the fire and police departments have looked at the development. The decision has not been made as to how the gates will be accessible for emergency personnel, through key or keyless pad, etc. Ms. Dowdy stated that she had spoken to Ken Claude, Murray Chief of Police, and he feels that a code would be more beneficial to police accessing the premises instead of a key. Ms. Dowdy said that she had also spoken to Dickie Walls, Fire Marshall, and he has explained a "Knocks System" to the developers for emergency service vehicles to have access anytime that they needed. Mr. Walls' view was that he would not sign off on the project until he knew exactly what type of system would be workable.

Chairman Whitaker asked if there was anyone else that wished to speak in favor of the project. There was no one. Chairman Whitaker then asked if anyone would like to speak in opposition of the project. There was no one. Chairman Whitaker then closed the public hearing and opened for Board discussion.

Ms. Dowdy reminded the Board that the conditional use permit on Phase I would be contingent upon the developers meeting all city regulations and also providing appropriate insurance coverage for the community owned assets and appropriate reserves for maintenance; therefore, the same restrictions should be placed on Phase II.

**Scott Seiber made a motion to approve the Conditional Use Permit application for The Gates, Phase II, contingent upon meeting all city requirements and that insurance coverage for the community owned assets and appropriate reserves for maintenance were provided. Helen Spann seconded the motion and the motion passed with a 4-0 voice vote.**

**Questions and Comments:** *RE: Transient Businesses:* Mr. Mastera referred to the discussion of transient businesses in earlier meetings. Peyton stated that a committee had been formed and they had met twice already and were scheduled to meet for the third time on Wednesday, October 24<sup>th</sup> at 3:30 to work on amending the proposed ordinance. There is currently no regulations concerning transient or mobile businesses. The Planning Department would like to have a few text amendments put in place, so that when one of these type businesses applies for a business license, the Planning staff could be consistent in following the rules and regulations.

*RE: N. 16 Street:* Peyton stated that when the BZA had the last conditional use permit application dealing with properties to the west of North 16<sup>th</sup> Street, the BZA requested that another letter be sent out to each property owner explaining what the rules and procedures were for that particular zoning district. The Planning Department has a letter and questionnaire ready to go in the mail inquiring exactly how each property is being used. Hopefully, the responses will let us know if these property owners are in compliance and if they are not, they will have to

apply for a Conditional Use Permit or demonstrate to the Planning Staff that they had been grandfathered in with some sort of documentation. There are a total of 123 letters to mail.

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Mr. Tom Auer asked what would happen if The Gates was not accepted and it just did not work out in Murray. He added that since it had been approved as a gated community, he wondered what would happen if the gates were removed and would that matter to the City. Ms. Dowdy stated that this development was being looked at as one piece of land and there was no way that this project could be divided up into lots and meet any lot size requirement. Scott Seiber stated that he did not feel that the gates would not be an issue and stated that if a person decides to buy a home in this project, that they buy it because it is in the gated community. He also stated that the only way the gates could be removed would be if the Home Owner's Association voted to eliminate the gates. Ms. Dowdy stated that even if the gates were removed, the streets would continue to be privately maintained by the developer. David Roberts added that the City was acting upon recommendations of the fire and police departments. He stated that the streets were only 24 feet in width versus 28 feet for a normal subdivision. Mr. Roberts said that the property owners know up front that they are buying into the Home Owner's Association and this should be referenced in their deed. Candace Dowdy said that these items are recorded at the Courthouse on this particular development.

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Chairman Whitaker stated that Candace had sent him an article on college renters in Lexington and the restrictions they have. He said that he had forgotten to bring it with him, but he would have it at the meeting next week. It had some interesting facts. Candace said that she would e-mail it to the Board so that they could review it before the meeting.

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Mr. Mastera reminded the members that there would be a special BZA meeting on Wednesday, October 24, 2007 at 4:30.

**Scott Seiber made a motion to adjourn. Tom Auer seconded the motion and it carried with a 4-0 voice vote.** The meeting adjourned at 6:55 p.m.

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Chairman, Bill Whitaker

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Recording Secretary, Reta Gray