

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, NOVEMBER 14, 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 5th Street.

Board Members Present: Darren Jones, Tom Auer, Ed Davis, Greg Mayes and Bill Whitaker

Board Members Absent: Scott Seiber

Also Present: Candace Dowdy, Peyton Mastera, Mike Pitman, David Roberts, Reta Gray, Mayor Rushing, Matt Mattingly, Robert Johnson, Kyle Johnson, Alvie Grant, Mary Anne Medlock, Frank Crider, Steven Moake, Bill Adams, Rev. David Simmons, Tung Dinh, Lynn O'choa, Bob Manning, J.T. Lee, Danny Brittain and public guests.

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

Chairman Whitaker stated that Mayor Rushing would like to make an announcement. Mayor Rushing welcomed the new board members, Tom Auer and Greg Mayes. Mayor Rushing then thanked the board for the work that they do as it is a voluntary duty that helps to speed the council meetings along and means a lot to the city of Murray.

Candace Dowdy swore in new Board of Zoning Adjustments member, Greg Mayes.

Approval of minutes from the October 17, 2007 Regular Meeting: Darren Jones made a motion to approve the minutes as presented. Tom Auer seconded the motion and it carried with a 5-0 voice vote.

Approval of minutes from the October 24, 2007 Special Meeting: Ed Davis made a motion to approve the minutes as presented. Darren Jones seconded the motion and it carried with a 5-0 voice vote.

Darren Jones made a motion to remove the request from the table for a Conditional Use Permit of Kyle Johnson, 1303 Poplar Street that had been tabled at the September 2007 meeting. 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 (2) Non-Related Persons to Occupy the Premises in an R-2 Zoning District –1303 Poplar Street – Kyle Johnson: Ms. Dowdy pointed out the property on a Power Point presentation and stated that this item had previously been brought before the board in September 2007. At that time the applicant asked that he be given additional time to gather more information; therefore, the application was tabled. Ms. Dowdy stated that Kyle was asking the Board for approval for one non-related person to reside with him because of some medical issues. The property is in an R-2

zone. The 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.

Chairman Bill Whitaker opened the public hearing and asked if there was anyone wishing to speak in favor of the application. Kyle Johnson, 1303 Poplar Street, and his father, Robert Johnson, 2080 Sharp School Road, Calvert City were sworn in. Kyle is a Murray State freshman and he is requesting that one non-related person be allowed to live with him due to his medical condition. Kyle has diabetes and he presented a letter from his physician recommending that he not live alone especially at night in case of an episode. Mr. Johnson purchased the property in June 2007 and Kyle moved in with another individual in August. Mr. Johnson asked that the Board give Kyle and another non-related person the opportunity to be good “students, citizens, and neighbors along with assisting Mr. and Mrs. Johnson in managing Kyle’s disability.

Ms. Dowdy stated that there had been no complaints from the neighbors nor had there been any complaints filed with the police department since Kyle had been living at the premises. Ms. Dowdy passed out letters of support from three of the surrounding neighbors.

Chairman Whitaker then asked if there was anyone else wishing to speak in favor of the application. Mr. Alvie Grant, 1301 Poplar, was sworn in. Mr. Grant stated that since Kyle moved in, the property has been maintained in a diligent way that makes the neighborhood look better. He added that the boys seldom have much company, and that it is usually during the daylight hours. He commented that there had not been any excess noise and he feels that he was lucky to have this type of neighbors.

Chairman Whitaker asked if there was anyone that wished to speak in opposition. Mary Anne Medlock, 1306 Poplar Street was sworn in. Ms. Medlock stated that she was representing a group of neighbors from the 1300 block of Poplar who are: Richard Ferrell at 1304 Poplar Street, Janet Shell at 1309 Poplar Street, Mary Jane Jackson at 1316 Poplar Street, Celia Wall at 1318 Poplar Street and herself at 1306 Poplar Street. Ms. Medlock began by stating that the neighbors did not have a problem with Kyle and added that Kyle had been a great asset to the community. Ms. Medlock continued by saying that the problem that exists is allowing the Conditional Use Permit to be approved. The opposed neighbors feel that if this permit is approved, that other property owners in the R-2 zoning area will either ignore to pursue future Conditional Use Permits or the Board will allow other multi-family groups to move in to their properties. Ms. Medlock added that one of the letters of support was from a property owner that did not actually reside in the area but rents his property at 1305 Poplar. The concerned citizens do not want more property owners to come and apply for Conditional Use; thus, adding more multi-family groups to the neighborhood.

Chairman Whitaker asked if there were any rebuttals. Mr. Robert Johnson came forward. He stated that he could see Ms. Medlock’s concerns; however, he felt that the board should consider each permits on its own merits and on its own location. He also stated that they would like for someone to be with Kyle because of the medical necessity. Chairman Whitaker asked Mr. Johnson what would happen to the house whenever Kyle finished school at Murray State

University. Mr. Johnson stated that if Kyle did not find a job in Murray that he would sell the house at that time. The public hearing was closed and opened for board discussion.

Tom Auer made the motion to approve the Conditional Use Permit to allow one non-related person to reside at the location of 1303 Poplar Street with Kyle Johnson (justified by physician's letter on Kyle's medical conditions) as long as Kyle lives there or is a student of Murray State University with the conditions that there are no late hour activities or no outside activities past 10:00 p.m. that would cause any disturbance to the neighbors. If there are any complaints brought against the property, the Conditional Use Permit shall be brought back to the board for review. This permit will be reviewed annually. Greg Mayes seconded the motion and it carried with 4-1 voice vote. Ed Davis voted no.

Dimensional Variance Request to Place a Recreational Vehicle in a Front Yard – 1002

Irene Terrace – Frank Crider: Peyton Mastera referred to a Power Point presentation to point out Mr. Frank Crider's front yard where he currently parks his recreational vehicle. Peyton explained that when he discovered that Mr. Crider had a recreational vehicle parked in his yard that was not in compliance with the ordinance, he sent a letter to Mr. Crider reviewing the restrictions for recreational vehicles in the zoning ordinance stating that they should be parked in a side or rear yard. After conferring with Peyton, Mr. Crider decided to apply for a dimensional variance.

Chairman Whitaker asked if this type of problem had existed before. David Roberts stated that had been several letters sent out to citizens that were parking recreational vehicles in their front yard; however, Mr. Crider's was not a typical situation. Mr. Roberts continued by stating that usually once a citizen was contacted about the parking of their recreational vehicle, the person would relocate it to an appropriate location. Mr. Crider's situation is different because he does not have much of a back or side yard to accommodate the parking of his recreational vehicle. Peyton reviewed the definition of a recreation vehicle as: "A vehicle of unit that is mounted on or drawn by another vehicle primarily designed for temporary living. Recreational vehicles include travel trailers, camping trailers, truck campers, and motor homes. Recreation vehicles shall not be permanently fixed to the ground or any structure". Mr. Mastera stated that he had looked back to see if there were any subdivision covenants pertaining to recreational vehicles was unable to find any since this is an older subdivision.

Mr. Frank Crider, 1002 Irene Terrace, was sworn in. Mr. Crider used the Power Point presentation to show his property lines. He stated that there are several evergreen trees between his property and Dr. J.D. Outland that were planted by Dr. Outland. These trees are actually on Mr. Crider's property and are forming a barrier; therefore, keeping Mr. Crider from being able to park his recreational vehicle in his side yard. Mr. Crider said that he was asking for a dimensional variance because he has a building in the backyard that he would not be able to access if he did park his recreational vehicle in the side yard. Mr. Crider also referred to the side yard on the other side of his house stating that this side has a ditch and is inaccessible. Mr. Crider concluded by saying that he did not want to take his recreational vehicle to a rental spot. When he purchased the vehicle, he wanted it available for his use whenever he decided to go

away for the weekend. The board clarified where the side yard is in connection to Mr. Crider's property.

Ed Davis made a motion to deny the request for a dimensional variance for Mr. Frank Crider, 1002 Irene Terrace, to park his recreational vehicle in a front yard as the zoning ordinance prohibits it. Mr. Davis amended included in his motion to waive all side-yard setbacks so that Mr. Crider can place his recreational vehicle in his required side yard and that Mr. Crider has 90 days to meet the terms of this variance and that it will not adversely effect the public health safety, or welfare or will not alter the essential character of the general vicinity, will not cause a hazard or nuisance to the public and will not allow an unreasonable circumvention of the requirements of the zoning regulation. Greg Mayes seconded the motion and it carried with a 5-0 voice vote.

Dimensional Variance Request to Keep Existing Free-Standing Signs – 511 N. 12th Street – Regions Bank: Peyton Mastera stated that Regions Bank had originally requested a dimensional variance to keep their existing pylon signs, but alter the appearance of each by switching to their new colors and logo. The sign along the N. 12th Street would actually expand in size.

Peyton added that a couple hours before the meeting, the applicant's request was changed to make the existing sign into a monument style sign by lowering the current sign and that the applicants have agreed to remove the additional free-standing sign currently situated along N. 13th Street. Peyton referred to a Power Point presentation and showed pictures of the proposed monument style signage. He stated that the applicant was now be asking for a six (6) foot size variance. The bank has approximately 115 to 120 feet of road frontage, which allows them a 55 square feet sign. The proposed sign is 10'6" x 5'10" which is 61.22 square feet; thus, the request for a six foot size variance. The height of the proposed sign is 7'6", which falls within the ordinance height regulations of 10'.

Mr. Steven Moake of Birmingham, Alabama, representative for Regions Bank, was sworn in. Mr. Moake stated that the signs are mass-produced at a standard size of 61 square feet and in order to make the sign smaller, they would have to make one custom application. The cost efficiency would be a lot more than using the standard monument sign. The sign is internally lit and would sit on a silver metal base.

Darren Jones made a motion to approve the dimensional variance for a six (6) foot size for a monument style sign at Regions Bank, located at 511 North 12th Street, because of their additional frontage road and the fact that they are converting to the monument style signage with the findings that it will not adversely effect the public health safety, or welfare or will not alter the essential character of the general vicinity, will not cause a hazard or nuisance to the public and will not allow an unreasonable circumvention of the requirements of the zoning regulation. Ed Davis seconded the motion and it carried with a 5-0 voice vote.

Dimensional Variance Request to Waive On-Site Parking Requirements in a B-3 Zoning District – 411 Maple Street – Capps and Bryson: Peyton referred to the proposed location on a Power Point presentation. He stated that the applicants are Dr. Hal Capps and Dr. David Bryson with Murray Ophthalmology Associates. They are considering relocating their business from the Medical Arts Building to 411 Maple Street (former Ward-Elkins building.) Based on the nature of their business they would be required to have 15 parking spaces. Dr. Hal Capps and Dr. David Bryson are requesting that the board consider waiving the parking requirements since the business is located in the B-3 (Downtown) Zoning District where parking cannot be designated for individual businesses. The Ophthalmology Associates have secured a letter from First Baptist Church approving the use of 15 to 20 parking spaces from the Fellowship Hall parking lot located between South 4th and 5th Streets to be used Monday through Friday.

Mr. Bill Adams, representative of the doctors and proprietor of Adam's Construction, was sworn in. Mr. Adams stated that the doctors are interested in being in the downtown area and he complimented them for that decision since all of the Murray medical offices actually started in the downtown area. Mr. Adams said that the doctors have not bought the property yet; however, the purchase is contingent upon them getting the dimensional variance granted for parking. Mr. Adams then stated that he felt that if the variance is granted, the doctors will move forward on purchasing the building. He added that the doctors feel that the size is a perfect fit for them, they want to be downtown, and they want the building to look like it blends in as an architectural asset to its surroundings on the court square. Mr. Adams then addressed the parking at the proposed site. He stated that they were proposing to add four spaces on the west side of the building for parallel parking along with the four spaces in the front of the building that are already available. Mr. Adams stated that since First Baptist Church was willing to share their parking lot with an additional 15-20 parking spaces.

Ed Davis made a motion to waive the parking requirements for Dr. Capps and Bryson's potential Ophthalmology business, located at 411 Maple Street, based upon the findings that it would not adversely effect the public health safety or welfare, not alter the essential character of the vicinity, will not cause a hazard or nuisance to the public and will not allow any unreasonable circumvention of the requirements of the zoning regulation. This variance will be limited to a medical facility only with note that First Baptist Church has given their written permission for the doctor's office to use their parking facility on the lot between 4th and 5th street. Darren Jones seconded the motion and it carried with a 5-0 voice vote.

Public Hearing To Review the Conditional Use Permit to Allow Church Related Activities in an R-2 Zone – 1627 Farmer Avenue – St. John's Episcopal Church: *Tom Auer recused himself.* Candace Dowdy pointed out the properties in discussion on a Power Point presentation and explained that the BZA approved a conditional use permit on February 22, 2006 for St. John's Episcopal Church to use the property located at 1625 Farmer Avenue for church related activities and for one student to live on the premise as well. In August of 2007, the property located at 1627 Farmer Avenue became available and St. John's Episcopal Church purchased it. The church office was previously located next door at 1625 Farmer Avenue. Ms. Dowdy stated

that a representative from the church had recently contacted the Planning office regarding the letter that the Planning Staff sent to each property owner in the area asking them to respond as to how their property was being used and informed them that the church had moved their church office to 1627 Farmer Avenue. Ms. Dowdy added that she explained that they would have to apply for a conditional use permit in order to use the property at 1627 Farmer for church purposes since it was located in an R-2 zone.

Chairman Whitaker opened the public hearing and asked for anyone wishing to speak in favor of the application to come forward. Reverend David Simmons, 1307 Kirkwood Drive, was sworn in. Rev. Simmons referred to the Power Point presentation and pointed out the properties that are currently owned by the church. Rev. Simmons then explained that the church is using the facility at 1627 Farmer Avenue as a church office and a place to hold Christian education meetings. He added that there was very little parking at the site; however, he noted that the church had a larger parking lot that was available to alleviate the parking issues. He also pointed out the carport that located in the front corner of the property and stated that there were plans to remove this structure from the premises. Rev. Simmons stated that there was also a need for a small sign next to the front door identifying the office. Ms. Dowdy stated that a two square foot sign would be permitted. Rev. Simmons concluded that he foresees the church undertaking a building project where there will be an addition to the church for Christian education and office space. He stated that the building at 1627 Farmer is actually going to be used now as a temporary office that will accommodate them until they are ready to build.

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

Darren Jones made a motion to grant the Conditional Use Permit at 1627 Farmer to allow church related activities specifically for office use for St. John's Episcopal Church contingent upon approval of the Fire Marshall and removal of the carport. Ed Davis seconded the motion and it carried with a 4-0 voice vote.

Review of Conditional Use Permit – 1625 Farmer Avenue – St. John's Episcopal Church:
Candace Dowdy stated that the original conditional use permit had been approved on February 22, 2006 for the church to use the property at 1625 Farmer for church related activities and allow one student to live on the premises as well. The church would now like to use the property for three or four student members of their church to reside at this location. As a conditional use in an R-2 zone, up to four (4) non-related people can occupy the premises. All adjoining property owners were notified, as a courtesy. Prior to the conditional use permit that was granted in 2006 the property was being used for rental to students. There is sufficient parking for four, three in the front and one on the side of the structure.

The intent is to make this into a student area where tenants seem to make the area feel like it is the student's space as opposed to just a meeting space. Rev. Simmons added that the tenants are

ones who will be hosting events, looking after the house, and the ones that have a real investment in the house. Parking should not be an issue as there is additional parking available in the church parking lot. There will be no one cooking for large groups of people at the site, only the tenants cooking for themselves. The functions at this house will be alcohol free. Rev. Simmons stated that he reviews each tenant's lease annually and as long as each tenant is in school and they are good renters, they are allowed to stay in the house. He then added that he or an assistant supervise each event. David Roberts asked if there were any rules for the tenant's guest that may stay overnight or for extended periods. Rev. Simmons stated if a friend comes in, they are allowed to stay only a week. There was no one else that wished to speak in favor of the review or against it.

Grey Mayes made a motion to amend the current Conditional Use Permit at 1625 Farmer, that was granted to St. John's Episcopal Church on February 22, 2006, so that they may now allow up to four (4) persons affiliated with the student ministry and are MSU students to reside at the residence contingent upon approval of the Fire Marshall. Ed Davis seconded the motion and it carried with a 4-0 voice vote.

Tom Auer rejoined the meeting.

Review of Screening Requirements – 809 Coldwater Road – Tung Dinh: Candace Dowdy pointed out the area on a Power Point presentation. She stated that Mr. Tung Dinh is requesting the board review the screening requirements that were previously approved for the Quest Fitness Center located at 809 Coldwater Road. The original site plan for this project showed a five feet high solid fence along adjoining R-4 residential properties as required by the zoning ordinance. On October 2, 2007, Pearly McClure, Building Official, issued a 45 day temporary certificate of occupancy for this location pending the construction of a fence and that at the end of the 45 days the property must show a substantial amount of grass coverage up to 95% of all area without any sediment or erosion on or off the property. Mr. Dinh would like to see if the Board would consider allowing him to meet the screening requirements by planting five (5) foot tall Leland Cypress trees along the property lines instead of the solid fence. These trees are rapid growing trees and will be planted every eight to ten feet apart along Mr. Dinh's properties to the rear and west side.

Chairman Whitaker swore in Mr. Tung Dinh, 90 Brittany Lane. Mr. Dinh stated that he had spoken with several people from the neighborhood and their wishes were that Mr. Dinh provides a solid fence along their property lines in the rear yards of the homes facing College Farm Road. Mr. Dinh stated that he is willing to do this and noted that he will be installing a six (6) foot fence instead of a five feet fence as he had previously stated. He then requested that he be able to fill in the bare spots with the Cypress trees in the area that borders the properties on 17th Street since a fence would not provide adequate coverage for the property that lies along the ditched area.

Chairman Whitaker asked if there was anyone else that wished to comment on the application. Ms. Lynn O'Choa, 1618 College Farm Road, stated that she was hoping that there was going to

be a screening fence and she would also like to address the outside lighting at Mr. Dinh's facility. Ms. O'Choa stated that there are four lights on the front of Mr. Dinh's building that are so bright that she did not have to turn on the lights in her bedroom at night now. Ms. Dowdy stated that once the daycare building was constructed between Mr. Dinh's gym and Ms. O'Choa's home, that the daycare building would provide some additional screening for Ms. O'Choa's home. Ms. Dowdy added that the City would address the lighting on the back of the daycare once it was built to make sure it was acceptable for surrounding residential areas.

Bob Nanney, 3773 Almo Shiloh Road, stated that his main concern was the lights that are on the current building that are shining into Ms. O'Choa's home. He feels that the lights need to be aimed towards the ground or have shades across the lights. He said that the lights are like spot lights. Mr. Nanney also stated that once the lighting issue was resolved and the fence was constructed, he did not feel he would have any other issues. Mr. Nanney then asked about the drainage plan for the Dinh property. Ms. Dowdy stated that storm water detention was addressed throughout the development. David Roberts stated that Mr. Dinh had an extensive system and that it is underground under the parking lot.

Mr. Dinh stated that since the lights on his gym were using a lot of electricity he was planning on putting the outside lighting on motion detector after 10:00 p.m. He added that there shouldn't be any traffic after hours; therefore, he would have the lights set to turn off.

Mr. J. T. Lee, 1616 College Farm Road, was sworn in. Mr. Lee said that he lived next door to the O'Choa's. He stated that the fence would be very beneficial to them. He added that he was holding off finishing his yard until after the fence was put in. Mr. Lee also had a question concerning drainage. He stated that he is totally pleased with the drainage system that has been recently installed; however, since the drainage ditch naturally slopes down, and the ditch had been dug down deeper for the drainage system, he is wondering where the fence will be placed. He added that trees were beautiful but he did not feel that they would provide enough coverage.

Mr. Danny Brittain, 1614 College Farm Road, was sworn in. Mr. Brittain stated that he understands that there is going to be a fence, but he would like to know if a timeline had been established for the fence installation. Mr. Dinh stated that he could start on Monday, November 19th and added that he would like to have a couple of weeks to complete the project depending on material availability.

A copy of the fence was presented and kept with reference to the conditional use permit.

Ed Davis made the motion to amend the Conditional Use Permit to allow a fence be constructed beginning at the SW corner of the property to the NE corner of 1610 College Farm Road; From SE corner to NW corner, and from that point going East along all properties zoned residential, Leyland Cyprus trees are to be planted; all other properties adjoining residential lots are subject to further screening if those property owners deem it necessary; all screening is to be completed by January 1, 2008. Darren Jones seconded the motion and it carried with a 5-0 voice vote.

Election of Officers: Candace Dowdy stated that Helen Spann and Andy Dunn's term had expired October 27, 2007 and each had chosen not to be reappointed to the Board of Zoning Adjustments. When Helen's term expired, the office of Vice-Chairman was left vacant. Candace explained that if Bill Whitaker, Chairman, was absent for some reason, that the person elected as Vice-Chairman would fill in as chairman. Chairman Whitaker suggested that Scott Seiber be moved from Secretary to Vice-Chair and Ed Davis be appointed as Secretary.

Darren Jones made the motion to move Scott Seiber from Secretary to Vice-Chairman and to appoint Ed Davis as Secretary. Greg Mayes seconded the motion and it carried with a 5-0 voice vote.

Questions and Comments: None.

Ed Davis made a motion to adjourn. Darren Jones seconded the motion and it carried with a 5-0 voice vote. The meeting adjourned at 7:50 p.m.

Chairman, Bill Whitaker

Recording Secretary, Reta Gray